Supreme Court, U.S.
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No._____

In the Supreme Court of the United States

October Term, 1996

RICHARD C. ANGINO
and
ALICE K. ANGINO,

Petitioners

vs.

BOARD OF SUPERVISORS OF
MIDDLE PAXTON TOWNSHIP,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COMMONWEALTH COURT OF PENNSYLVANIA

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STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Whether the Board of Supervisors' denial of the Landowners' request for waivers from the local planning ordinance was constitutional, where there exists no essential nexus between the condition placed on approval of the waivers and legitimate governmental interest put forth to support it?

II. Whether the Board of Supervisors' denial of the Landowners' request for waivers from the local planning ordinance was constitutional, where the condition placed on approval of the waivers does not bear the required constitutional relationship to the legitimate governmental interest put forth to support it?

PARTIES TO THE PROCEEDINGS

The only parties to the proceedings are those appearing in the caption of the case.

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Petition

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD C. ANGINO and ALICE K. ANGINO,

Petitioners

vs.

BOARD OF SUPERVISORS OF
MIDDLE PAXTON TOWNSHIP,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
COMMONWEALTH COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

REFERENCE TO THE OPINIONS DELIVERED IN THE COURTS BELOW

On March 22, 1996, the Pennsylvania Supreme Court denied the Anginos' Petition for Allowance of Appeal (App. 1a), from the Decision of the Commonwealth Court of Pennsylvania in *Angino v. Board of Supervisors of Middle Paxton Township*, No. 2620 C.D. 1994 (August 8, 1995) (App. 2a).

With respect to the other Opinions and Orders issued in this case, the September 16, 1994, Decision of the Dauphin County Court of Common Pleas, No. 2557 S 1991 (App. 14a); the January 27, 1993, Decision of the Commonwealth Court, 320 C.D. 1992 (App. 32a); and the January 23, 1992, Decision of the Dauphin County Court of Common Pleas, No. 2557 S 1991 (App. 48a).

A copy of the September 22, 1993, letter from the Board of Supervisors of Middle Paxton Township denying the Anginos' subdivision plan and all requested waivers (App. 52a).

STATEMENT OF JURISDICTION

The United States Supreme Court is vested with jurisdiction over this matter pursuant to 28 U.S.C. §1257(a) which sets forth the requirements for review by Writ of Certiorari. Also pursuant to Supreme Court Rule 10 and the powers vested by the United States Constitution, the Supreme Court has broad discretion to consider matters which affect constitutional principles.

CONSTITUTIONAL PROVISIONS INVOLVED

The instant Petition for Certiorari does not attack the constitutionality of a state or federal statute. Rather, it seeks to apply the constitutional principles embodied in the Takings Clause of the Fifth Amendment to the United States Constitution to land use regulation of a municipality that does not amount to a taking, but nevertheless deprives a landowner of valuable property rights.

RELEVANT ORDINANCE INVOLVED

Subdivision and Land Development Ordinance for Middle Paxton Township

Because of its size, the Subdivision and Land Development Ordinance for Middle Paxton Township is set out at length at App. 70a-81a.

STATEMENT OF THE CASE

In *1971*, Petitioners Richard and Alice Angino (hereinafter "the Anginos") purchased 52 acres of rolling hills in Middle Paxton Township, Dauphin County, Pennsylvania (App. 14a). The plan was to build a home for themselves and sell lots, particularly from ten acres (Fishing Creek Valley Acres) that were located along state highway 443 (Fishing Creek Valley Road).

The first one acre lot was sold and a house built in 1979. The Township approved that subdivision in accordance with the Subdivision and Land Development Ordinance that it adopted *on February 26, 1979* (App. 14a).

A description of the land here in question was accurately portrayed by the Dauphin County Court of Common Pleas in its September 16, 1994, Opinion and Order:

> The land in question sits on a relatively steep, rolling landscape (slopes of 15%-25%) and is predominantly woodland. The area is generally of a rectangular shape and runs east and west along the north side of Route 443. Because of the contour of the land, the only feasible entrance was near its southwest corner.

(App. 14a-15a).

The land is further described in similar manner by the Commonwealth Court in its August 8, 1995, Opinion:

> The land rises steeply away from the road, and the only access is from a point near the southeast corner of the property. A gravel road built by the [Anginos] in 1979 runs from there diagonally up and across to a commercial nursery owned by [Anginos] to the northeast of the pro-

posed subdivisions, *which has operated since the early 1970s.*

(App. 3a-4a) (emphasis supplied).

A private, gravel road built by the Anginos to serve the house, future lots, and their small wholesale nursery business *was approved by the Pennsylvania Highway Department (PennDOT) in 1979* (App. 33a).

In 1987, the Anginos presented a "sketch plan" to the Middle Paxton Township Planning Commission (hereinafter "the Commission"), for the further development of the remaining ten acres (Fishing Creek Valley Acres) (App. 33a). Because of the location of the house and septic system on the one acre sold in 1979, the Commission noted that a waiver would be required as to the 150 degree curve radius mandated by the Ordinance. Waivers would also have to be obtained as to side slope (3/1) and cul-de-sac (dead end street) length (500 feet) (App. 34a).

In 1990, the Anginos formally sought waivers to 501(g) (curve radius), 501(i) (cul-de-sac length) and 501(k) (side slope radius) as well as approval of the Preliminary/Final Subdivision Plan of Fishing Creek Acres (App. 34a). Relevant portions of the Township Ordinance are set out in the Appendix at App. 70a.

There has never been any question that "hardship" existed and the Anginos, because of the location of the house and septic system, could not conform to the radius and side slope requirements. Additionally, because of the relatively steep slope of the terrain, the Anginos could not comply with the 500 foot cul-de-sac requirements (App. 52a).

It should be noted that the waivers as to radius and side slope would be required to add a *single lot* to the projected development and a waiver to cul-de-sac length *to add a second*

lot. (See, Map, App. 122a). Without the grant of waivers, the land could not be commercially developed.

It should also be noted that the radius curve requirement presumes a *moving* vehicle negotiating curves at 35 mph; the side slope requirements presume rocks and soil falling on a roadway; and the cul-de-sac length mandate anticipates an emergency occurring at exactly the same time that the roadway is blocked by another emergency.

The Commission made various demands upon the Anginos including a reduction in the number of lots, increase in width of paved cartway, and a reduction to 750 feet in cul-de-sac length (App. 16a).

The Anginos, as part of the process, were required to obtain approvals from PennDOT as to the safety of the radius curve as it enters onto the state highway. Approval was also required and obtained from the Dauphin County Conservation District as to the 1/1 slope in solid rock that was anticipated (App. 61a).

To satisfy the demands of the Commission, the Anginos expended $70,000 in the various engineering documents and revisions and associated land acquisition and development expenses (App. 16a).

After the Anginos, *at great cost, complied with the demands of the Commission,* and *after obtaining approval from PennDOT and the Dauphin County Conservation District in April, 1991, the Commission unanimously* recommended to the Middle Paxton Township Board of Supervisors (hereinafter "the Board") the grant of all waivers sought and approval of the plan for Fishing Creek Acres (App. 16a).

Notwithstanding the incredible expense imposed upon the Anginos to comply with the Commission, the *Commission's* unanimous recommended approval of the Fishing Creek Acres plan, and the *approval of the public entities specifically*

charged with such jurisdiction, and notwithstanding *the Board's admission of hardship on the Anginos caused by the* terrain of the land and the existence of the house and septic system on the one acre of land, the Board refused to grant approval of the development plan and the waivers sought (App. 52a).

Initially, the Board's action was taken without any comment or supporting reasons. The Board's denial letter merely repeated what was not disputed: that the plan violated certain sections of the Township Ordinance. The letter provided no reasons or explanations of the significance of these violations or safety interests violated or why they refused to approve on conservation and road safety bases *when the public authorities with specific jurisdiction granted approval* (App. 42a).

The Board's actions were reversed by the Commonwealth Court of Pennsylvania, 320 C.D. 1992 (Jan. 27, 1993) *(Angino I)* (App. 32a). The Commonwealth Court's Order required the Board to render a decision that complied with Section 1004 of the Middle Paxton Township Ordinance requiring that *"grounds"* for denial of waivers *be in writing* (emphasis supplied) (App. 44a). The Commonwealth Court stated:

> If the [May 15, 1991] letter is read as a whole to mean that the variance requests are denied because of violation of the cited sections, then it provides a 'reason' but explains nothing. The Anginos requested waivers *because* they knew their application violated certain ordinance provisions—such a 'reason' for denial conveys no new information.
>
> ***
>
> Once the Supervisors have provided a decision stating the reasons for the denials of the waiver requests, the

> Anginos will be in a position to state their reasons for appeal to the trial court if need be.

(App. 42a, 44a) (emphasis in original) (footnote omitted).

On July 19, 1993, a public hearing was held where both sides presented evidence and produced witnesses concerning the requested waivers (App. 17a). On September 22, 1993, the Board again notified the Anginos by mail that their subdivision plan and all requested waivers were denied by a vote of 2-1 (App. 18a). The Board indicated that *all* requested waivers *posed "public safety hazards" and were "contrary to the public interest."* (App. 52a) Curiously, however, the Board proposed a condition to the Anginos on which "one or more of the waiver requests" would be granted (App. 54a). Grant of these waivers would be forthcoming *if the Anginos would limit traffic on the existing road to "development" traffic and require that nursery traffic either be rerouted through their own driveway or they build an entirely new road just for the nursery.* Incredibly, the Board would grant the waivers if the Anginos required nursery vehicles, including occasional tractor trailers, to use their one lane private driveway with poor sight distance, but would not grant the waivers for the proposed two lane driveway with excellent sight distance. The Anginos would not agree to such a condition (App. 54a).

The Anginos appealed the Board's decision to the Dauphin County Court of Common Pleas, *Angino v. Board of Supervisors of Middle Paxton Township,* No. 2557 S 1991. On September 16, 1994, the three judge panel held that the Board had abused its discretion in denying the Anginos' request for waivers and in not approving the subdivision plan. Said the Court:

> The decision of the Board to deny their variance requests provides a perfect example of a decision made

> against the spirit of the Ordinance which has resulted in a substantial injustice.

(App. 31a). The Court, therefore, reversed the Decision of the Board.

The Board then appealed the Decision of the Dauphin County Court to the Commonwealth Court, *Angino v. Board of Supervisors of Middle Paxton Township*, No. 2620 C.D. 1994 *(Angino II)*. On August 8, 1995, the Commonwealth Court reversed the Decision of the Dauphin County Court (App. 13a). The Anginos' Application for En Banc Reargument before the Commonwealth Court was denied (App. 2a), as was their Petition for Allowance of Appeal to the Pennsylvania Supreme Court (App. 1a). The Anginos now seek Writ of Certiorari from Your Honorable Court.

REASONS FOR THE ALLOWANCE OF THE WRIT

I. The Constitutional Principles Applied Consistently By Your Honorable Court To Municipal Regulation Of Private Land Use Apply With Equal Force To The Case At Bar

While *technically* not a Takings case, the Anginos here seek application of the principles espoused in the Takings cases to the case at bar. The Board has, in effect, precluded any further development beyond the first lot sold because it is financially impossible to comply with the Township's Ordinance; conceding to their condition would cause great safety problems because of the Anginos' private very narrow driveway and poor sight distance.

While Your Court has long recognized the authority of state and local governments to engage in land use planning, *Euclid v. Amber Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926), Your Court has also taken seriously our Constitution's promise to the citizenry of security in the ownership of property. Such ownership has oft been described as "sticks in a bundle of rights." *Loretto v. Teleprompter, Inc.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982); *Kaiser Aetna v. United States*, 444 U.S. 164, 176 S.Ct. 383, 62 L.Ed.2d 332 (1979).

In two recent cases Your Court has defined the parameters by which a municipal entity may regulate a private landowner's proposed use of his land by conditioning approval on an act by the landowner. First, in *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), Your Court held that while the government has the

power to condition some proposed use of land upon some concession by the owner, that condition must further the governmental purpose advanced as justification for prohibiting the use. Then, in *Dolan v. City of Tigard,* U.S. , 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), Your Court answered the question left open by *Nollan,*

> [O]f what is the required degree of connection between the exactions imposed by the city and the projected impacts of the proposed development.

Dolan, U.S. at , 114 S.Ct. at 2312, 129 L.Ed.2d at 311.

Your Court held that more than a reasonable relationship between the condition imposed and the use to which the property is being put is required in these cases. Your Court opted for a "rough proportionality" test as the better constitutional barometer. *Dolan,* U.S. at , 114 S.Ct. at 2319, 129 L.Ed.2d at 320.

To re-emphasize, the Anginos here do not suggest that the case at bar involves the actual taking, but rather a practical "taking" of property. The Anginos assert that the same principles involved in these Takings cases should be applied here where the condition sought to be exacted by the Board bears no constitutional relationship to the reasons put forth to support it.

In *Nollan,* the California Coastal Commission imposed a condition on approval of the landowners' building permit. That condition required the landowners to transfer an easement to the public on their beach front property to allow the public easier access to certain other areas of the beach. Of course, the landowners objected. The administrative agencies and the Courts of California all held that the condition imposed was a valid exercise of state power. Your Court granted review.

Your Court recognized that, had the California Coastal Commission simply required the Nollans to make an easement

across their property, a taking would have occurred. But the question became whether adding a condition necessarily altered the outcome. Your Court held that it did not, where a nexus between the condition imposed and the original purpose of the building restriction was lacking.

In *Dolan*, Your Court was asked to expand upon the holding of *Nollan* and determine the "required degree of connection" between the condition imposed and the impact of the proposed development. Mrs. Dolan, the Petitioner in *Dolan*, owned 1.67 acres of land in the city of Tigard on which her 9,700 square feet supply store stood. In order to keep up with local competition, Mrs. Dolan sought to expand her business. The plan called for razing the existing structure and building a new 17,000 square feet structure. The city conditioned approval of the proposed expansion upon Mrs. Dolan's dedicating almost 10% of her land to the city for a pedestrian/bicycle pathway and a storm drainage system. The City Planning Commission based this conditional approval on the City's Community Development Code (CDC) that sought to reduce traffic congestion in the downtown area as well as minimizing potential damage to areas of the city that fall within the city's 100 year flood plain. Mrs. Dolan requested variances from the CDC but same were denied. She then appealed to the Land Use Board of Appeals (LUBA) on the ground that the city's dedication requirements were not related to the proposed developments. LUBA found a reasonable relationship. The Oregon Court of Appeals affirmed, as did the Oregon Supreme Court; Your Court granted certiorari.

Your Court applied the rule of *Nollan* and first determined that the city's reasons behind each of their imposed conditions provided the essential nexus between legitimate state interests and the conditions imposed. Your Court, however, went a step further in order to decide the degree of connection required to impose such conditions without violat-

ing constitutional principles. After a review of state court decisions in this area that found a spectrum of tests ranging from "very generalized" to "very exacting," Your Court settled on a test of "rough proportionality." This test requires a city to "make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Dolan,* U.S. at , 114 S.Ct. at 2319, 2320, 129 L.Ed.2d at 320. Your Court held that the city of Tigard did not meet its burden for either condition. Quoting a dissenting Justice from the Oregon Supreme Court, Your Court stated:

> The findings of fact that the bicycle pathway system '*could* offset some of the traffic demand' is a far cry from a finding that the bicycle pathway system *will*, or is *likely to*, offset some of the traffic demand.

Dolan, U.S. at , 114 S.Ct. at 2322, 129 L.Ed.2d at 323 (emphasis in original).

The principles espoused in these cases are equally applicable to the case at bar despite the fact that this case is not a Takings case. The Decision of the Board has denied the Anginos of substantial justice and fairness and has resulted in their loss of an important stick in the bundle of rights that are commonly characterized as property.

The Board here has stated they are concerned that the access road to the Anginos' proposed development will not be safe, but they have failed to give any non-conclusory specific reasons. Incredibly, the Board has proposed approval of the waivers on condition that the Anginos move the nursery traffic from a two lane bermed road with excellent sight distance to a single lane private drive with poor sight distance.

Rejection of the condition by the Anginos, as happened here, means that waivers are denied and the development plan is scrapped. The result, however, is not any safer because the

mix of traffic, truck and auto, will continue, and it will continue on an unimproved road. Rather, the effect of the waivers' denial achieves a result opposite to what the Board purports to accomplish. Under the guise of safety, the Board's denial of the waivers will continue an allegedly unsafe traffic pattern. As Your Court said in *Nollan:*

> In short, unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but an 'out and out plan of extortion.' (citations omitted)

Nollan, 483 U.S. at 837, 107 S.Ct. at 3149, 97 L.Ed.2d at 689.

It should be noted that the Board used almost the same identical conclusory language to deny each and every one of the waiver requests.

The Board's decision to deny the requested cul-de-sac waiver was based on their finding that:

> [I]t *appears* that a substantial number of vehicles are using and *will [likely]* use the roadway in question ... .

(App. 53a) (emphasis added).

Here, as in *Dolan,* what the traffic pattern "appears" to be is a far cry from what the traffic pattern will actually be. Testimony presented at the July 19, 1993 Board of Supervisors hearing uncovered that *only 10 to 20 large size trucks per year* would be using the road (App. 91a). It should be noted that Middle Paxton Township's 500 feet cul-de-sac length is the shortest in Central Pennsylvania, and perhaps in the state, and many other municipalities have cul-de-sac lengths of the requested length of 750 feet or more (App. 82a). *The Township has admitted that fact by recently amending their ordinance to 800 feet in effect stating they were not totally candid in asserting that any length beyond 500 feet was unsafe* (App. 118a-119a).

The purpose behind the radius curve requirements applies to safety in driving through a development *and not to entering onto public highways or coming to a stop at intersections;* this is controlled by PennDOT which approved the safety of the radius as it enters onto the state highway.

The American Association of State Highway and Transportation Officials (AASHTO) and PennDOT provide completely different design requirements for intersections than for curves as one proceeds at 35 mph throughout a development. Side slope, as pointed out before, is a conservation matter. In addition to the location of the house and septic system, the outcropping is solid rock that already has required dynamiting and was the basis for the hardship finding. Again, the Dauphin County Conservation District, which has specific jurisdiction as to conservation matters, has approved the development. Neither AASHTO nor PennDOT has any restrictions whatsoever as to cul-de-sac lengths.

Finally, it is difficult to imagine what terrible safety concerns the Township envisions from some soil or stones going onto the private road or a few nursery trucks traversing the road or an additional 250 feet of cul-de-sac length that would be of such severity as to deny the waivers and preclude the commercial development of the Anginos' property.

Your Honorable Court should grant certiorari to review the constitutional propriety of placing conditions on a landowner's application for development in the non-takings context.

II. The Decision Of The Board To Deny The Anginos' Waivers Was Arbitrary And Capricious And The Commonwealth Court Erred In Reversing The Decision Of The Trial Court

The Board's denial of the waivers in this case constitutes arbitrary and capricious conduct and therefore is an abuse of discretion.

Both the Commonwealth Court in *Angino II* and the Dauphin County Court recognized that the scope of review of an administrative decision, where no additional evidence is taken, is limited to determining whether the Board committed a manifest abuse of discretion or an error of law in denying the waivers. *Valley View Civic Ass'n v. Zoning Board of Adjustment,* 501 Pa. 550, 462 A.2d 637 (1983). Further, both Courts acknowledged that an abuse of discretion will be found *where* the Board's findings *are not supported by substantial evidence. Id.* at 555, 462 A.2d at 640. Substantial evidence *is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Id.*

Although *the Board* was required by the Ordinance, state and federal Constitutions and appellate precedent, including the prior Commonwealth Court ruling in *Angino I,* to give *reasons* why granting the waivers would *pose significant public safety hazards,* the second Commonwealth Court panel *(Angino II)* declared that the burden of proof as to safety hazards *was on the landowners.* The *(Angino II)* Commonwealth Court panel ignored the fact that there is *already* a mix of commercial and residential traffic from Lots 1 and 2 and the nursery, *and the only change will be adding four more residential lots to the existing traffic.* Rejection of the waivers will not remove the existing mix of residential and commercial traffic. Permitting the waivers will not add any safety concerns. The

Township cannot seriously contend that an occasional nursery vehicle is an unacceptable risk to the four new lot owners. The ability of *existing* commercial traffic to safely travel on the private road or turn into or from the public road would not change by the grant or denial of the waiver requests.

It should be noted that the proposed radius for the new road would significantly improve the radius and other safety features of the existing road that serves residential and commercial vehicles and otherwise improves entry onto Route 443.

Testimony and pictures were offered into evidence at the public hearing pertaining to *all 96* streets, roads, and public driveways that *currently exist* along Fishing Creek Valley Road from Front Street to slightly east of the Anginos' property. Virtually *none* of the driveways, streets, roads, etc., conforms with *all* of the Township radius, side slope, and cul-de-sac Ordinance requirements and yet no unusual safety hazards have been recorded. The Township's *own community building* along Fishing Creek Valley Road, open to the public for church services, meetings, public functions, voting, etc., *violates virtually all of the Ordinance requirements imposed upon the Anginos* and yet obviously the Board does not consider same to be so hazardous as to mandate conformance with their own Ordinance.

As to the cul-de-sac waiver requested [501(i)], the Township Engineer admits that neither PennDOT nor AASHTO recommends any limitations for cul-de-sac or dead end lengths (App. 82a). The Township Engineer's only justification for the arbitrary 500 feet limit is the one in a million occasion of an emergency beyond 500 feet occurring simultaneously with a catastrophe entirely closing off the roadway near the entry.

The Township Engineer, however, by his memorandum of April 19, 1993 (App. 82a), admits that many township

ordinances provide for cul-de-sac lengths *in excess* of the 750 feet recommended by the Planning Commission. The Township's own Comprehensive Plan permits cul-de-sac lengths up to 1,000 feet, and two to three years before the instant plan, the Township permitted a cul-de-sac length of 1,350 feet leading to 16 lots in a development *where the chair of the Planning Commission lives*. As previously noted, the Township has since amended its Ordinance to 800 feet (App. 118a-119a).

Along the four mile distance from Front Street to just beyond the Anginos' property, there are 96 driveways, roads, and streets including 18 that lead to two or more residences. There are nine streets that lead to six or more residences. *There is only one of the 96,* Potato Valley Road, that is not a dead end street. Many, if not most, of the streets leading to two or more residences exceed the 500 feet cul-de-sac length mandated by the Ordinance and yet no unusual accident frequency has been recorded.

The third waiver sought involves section 501(k), slope of banks along streets. The Township Ordinance requires a three to one slope when one is cutting out a new bank even in ledgerock so long as the area is considered to be "fill." The purpose of this subsection is admittedly to preclude soil and/or stones from falling into the area along the edge of a road and interfering with water flow or resulting in soil actually going onto the driveway itself. The undisputed testimony in the instant case is that the bank involved had to be dynamited out of rock and any additional cutting into the bank to improve the curve would again require dynamiting and damage to the septic system of the existing house. There would be little likelihood of, and experience has shown no hazard from, erosion from such a bank. One cannot even imagine any serious safety concern from stone or soil falling from a *four* foot bank onto the *berm* or *two lane* driveway.

Much of Fishing Creek Valley Road was cut out of the same type of rocky terrain, and the northern bank of much of Fishing Creek Valley Road is closer to a one/one slope than a two/one slope and throughout much of its length has little, if any, berm. The extremely sharp slope on Fishing Creek Valley Road has not resulted in any unacceptable safety hazards to vehicles driving along Fishing Creek Valley Road.

A waiver was also sought and denied with respect to the requirement of an 18 foot paved cartway. Fishing Creek Valley Road itself, *a state highway* (PA Route 443) and the *principal artery* for traffic, is *only 18 feet wide.* Few, if any other, streets, roads, or driveways among the 96 along Fishing Creek Valley Road have an 18 foot wide paved driveway. Fishing Creek Valley Road, throughout most of its length, has little, if any, berm and/or shoulder and yet the Board demanded 18 feet plus berms; all to be paved. All of this for four lots.

In summary, the instant case deals with the Anginos attempting to extend a previously-approved right-of-way for an additional distance of 450 feet in order to potentially sell four lots in a rural township with a 1987 population of 5,420 occupying 33,920 acres of which 31,429 are open spaces. The major artery is Fishing Creek Valley Road (Route 443), which is only 18 feet wide and meanders to such an extent that there are posted speed limits of 45, 40, 35, 30, and 25 over a four mile stretch starting at the Susquehanna River and continuing for approximately four miles to the Anginos' property. Ninety-six driveways, roads, and streets along this four mile stretch are as narrow as eight feet, with the vast majority being less than 12 feet wide. Many are not paved and virtually none conforms to the Middle Paxton Township Ordinance.

The expressed purpose of the Middle Paxton Subdivision and Land Development Ordinance is stated in Section 201:

> The purpose of this subdivision and land development ordinance is to provide for harmonious development of the municipality and county by:
>
> a. Ensuring the orderly and efficient integration of subdivisions into the development of the Township of Middle Paxton.
>
> b. Ensuring sites suitable for building and human habitation.
>
> c. Ensuring conformance of subdivision plans with public improvement plans.
>
> ***
>
> e. Ensuring the protection of water resources and drainageways.
>
> f. Ensuring the efficient movement of traffic.
>
> g. Ensuring equitable handling of all subdivision plans by providing uniform standards and procedures.
>
> h. Ensuring the greater health, safety and welfare of the citizens of the Township of Middle Paxton.
>
> i. Ensuring the efficient and orderly extension of community services and facilities at minimum cost and maximum convenience.

(App. 71a).

Any street or road that would totally comply with the Township Ordinance would be uniquely different from any existing street, road, or highway.

Moreover, the Board does not state that a substantial number of vehicles *are or will* be using the roadway, but rather only that "it appears." Additionally, "substantial", "number", and "vehicles" are not quantified or otherwise described. There is no mention of types of vehicles or any reference to big trucks or any number of vehicles per day. Rather, the

Board's concerns are centered on "a number of times a year." (App. 52a)

There is no specificity as to the "significant public safety hazards" that would result from the granting of the waivers for four new lots that do not currently exist or will not continue to exist if the waivers are denied. In reality, the Board refused the Anginos' requests for waivers based upon the fact that the proposed road did not and could not conform to the Township Ordinance and, as an afterthought, mentioned a mix of commercial and residential vehicles and a parking lot that *could* hold 100 cars but generally is used to store equipment, vehicles, machinery, tanbark, stones, sand, etc.

The Commonwealth Court in *Angino II* accepted testimony in 1993 (three years after the Anginos' original application), that the Anginos purchased *other* property surrounding their original purchase, that in 1993 they owned 320 acres and *they could and presumably should build another road for any nursery traffic, and ignored the fact that $70,000 was already spent for the road to the nursery, Lots 1 and 2, and for the proposed four new lots.*

The Board and the Commonwealth Court relied on facts that did not exist in 1990 when the Anginos' application was first denied.

As a condition precedent to granting the waivers, the Township required the impermissible condition that the Anginos waive their right to use the road in question for anything other than five residential lots. Considering an additional $30,000 at least to complete the road, this would amount to $100,000 of expenses for four additional lots worth approximately $140,000, while at the same time losing use of the road for nursery vehicles. It was suggested that nursery vehicles use the Anginos' private drive or that the Anginos construct an-

other road for the nursery vehicles, neither of which condition is acceptable to them or permitted by existing law.

Mr. Angino testified that his one lane private drive was too narrow for any additional traffic (App. 89a). As noted before, the Board, in denying the requests to have the nursery traffic use an 18 foot wide road with good visibility, was willing to have the same traffic use Anginos' private one lane driveway which has poor visibility.

In addition, the Anginos' application should not be denied based upon facts that did not exist in 1990 when the application was filed. Their application should not be denied based upon a defense that was not raised at the time of the application or at any time during any hearings or the taking of testimony but rather was given as an afterthought following the completion of the record.

Accordingly, Your Honorable Court should grant this Petition in order to review the Decision of the Commonwealth Court in light of the important constitutional principles regarding the Board's regulation of land use.

CONCLUSION

For the reasons stated above, Petitioners Richard C. and Alice K. Angino respectfully request that this Honorable Court grant their Petition for Writ of Certiorari.

Respectfully submitted,
ANGINO & ROVNER, P.C.
RICHARD C. ANGINO
I.D. No. 07140
Attorneys for Petitioners

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

No. 566 M.D. Alloc. Dkt. 1995

Petition for Allowance of Appeal from the Memorandum Opinion of the Commonwealth Court

RICHARD C. ANGINO and ALICE K. ANGINO,

Petitioners,

v.

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP,

Respondent.

ORDER

PER CURIAM:

AND NOW, this 22nd day of March, 1996, the Petition for Allowance of Appeal is DENIED.

Madame Justice Newman did not participate in the consideration or decision of this matter.

TRUE & CORRECT COPY
ATTEST: MAR 25 1996
/s/JOAN L. STEHULAK, ESQUIRE
DEPUTY PROTHONOTARY

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 2620 C. D. 1994

RICHARD C. ANGINO and ALICE K. ANGINO

v.

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP,

Appellant

ORDER

NOW, October 2, 1995, having considered appellees' application for reargument, the application is denied.

BY THE COURT:

/s/JAMES GARDNER COLINS,
President Judge

CERTIFIED FROM THE RECORD
AND ORDER EXIT
OCT 3 1995
/s/C.R. Hostutler
Deputy Prothonotary-Chief Clerk

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 2620 C.D. 1994

ARGUED: April 7, 1995

RICHARD C. ANGINO and ALICE K. ANGINO

v.

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP,

Appellant

BEFORE: HONORABLE DORIS A. SMITH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE GEORGE T. KELTON, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY JUDGE SMITH

FILED: August 8, 1995

The Board of Supervisors (Board) of Middle Paxton Township (Township) appeals from an order of the Court of Common Pleas of Dauphin County that reversed a decision of the Board denying the application of Richard C. and Alice K. Angino (Applicants) for approval of a preliminary/final subdivision plan. The questions presented are whether the Board properly denied the Applicants' requests for variances from provisions of the Township's Subdivision and Land Development Ordinance (Ordinance) relating to (1) maximum cul-de-sac length; (2) minimum centerline curve radius; and (3) bank slope.

I

In 1971 Applicants purchased 52 acres in a rural area of the Township extending north from Fishing Creek Valley Road. At issue here is the lower, roughly ten-acre portion. The

land rises steeply away from the road, and the only access is from a point near the southeast corner of the property. A gravel road built by Applicants in 1979 runs from there diagonally up and across to a commercial nursery owned by Applicants to the northeast of the proposed subdivisions, which has operated since the early 1970s.

In 1987 Applicants presented a sketch plan to the Township's planning commission for further subdivision of the lower portion of the property into five new lots. In 1990 Applicants presented a "Preliminary/Final Subdivision Plan" to the Board, which referred it to the planning commission. That plan provided for a cul-de-sac 1200 feet long, with five new lots and a relatively tight, 40-foot radius curve in the road just before a "T" intersection with the highway (instead of the existing diagonal intersection). The plan requested waivers from the ordinance requirements of maximum length of 500 feet for cul-de-sacs, minimum curve radius on a minor private road of 150 feet and bank slope of 1:3, along one portion of the road. Although the cul-de-sac included a circular turnaround at the end, it was not enclosed by the proposed lots but provided access to the nursery.

The planning commission raised numerous concerns, and Applicants had their engineers make successive revisions to the proposal. The revised plan provided for a cul-de-sac 750 feet long, with four rather than five new lots. As before, however, the lots at the end did not adjoin; rather, they stopped at either side of the road, which continued on from the turnaround to the nursery. In the written explanation provided to Applicants, the Board stated without elaboration that the proposal was rejected because it violated the provisions from which waivers were sought. The court of common pleas affirmed. On review, this Court reversed and remanded, concluding that the explanation provided did not satisfy the requirement of Section 1004 of the Ordinance that the Board

state the grounds for denial of a request for alteration of requirements. *Angino v. Board of Supervisors of Middle Paxton Twp.* (No. 318 C.D. 1992, filed January 27, 1993).

After remand, Applicants requested and received a hearing before the Board, which took place on July 19, 1993. Applicants presented the testimony of the Chair of the planning commission, an associate of Applicants in regard to this and other real estate development projects, an engineer from the firm engaged by Applicants and Richard C. Angino. The Township presented the testimony of an engineer from a firm hired to advise the Board and a consultant in municipal planning and land use matters. At its meeting on September 7, 1993, the Board offered to approve the development and grant the necessary waivers if Applicants agreed to the condition that the road not be used for access to the nursery, but Applicants declined that offer.[1] The Board then voted two-to-one against approval. In its letter to Applicants, the Board stated that, although hardship factors were present in the case, a grant of the waiver requests posed significant public safety hazards and would be contrary to the public interest.

II

On appeal, a three-member panel of the court of common pleas, without taking additional evidence, reversed. The court acknowledged that its scope of review, where no additional evidence was taken, is limited to a determination of whether the Board committed a manifest abuse of discretion or an error of law in denying the requested variances. *Valley View Civic Ass'n v. Zoning Board of Adjustment,* 501 Pa. 550, 462 A.2d

[1] After the 1990 application, Applicants purchased other property surrounding their original purchase; they now own a total of 320 acres. At the hearing Mr. Angino testified that nursery traffic might not be involved because currently before the planning commission is a proposal for a road from an existing development to the west to a hotel on the main road to the east of the property, and the long-term goal is for nursery traffic to use that road. N.T. at 99-100.

637 (1983). An abuse of discretion will be found only where the Board's findings are not supported by substantial evidence. Section 1005-A of the Pennsylvania Municipalities Planning Code (MPC)[2]; *Valley View Civic Ass'n.* Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* Based on its review of the record, the court concluded that the substantial evidence did not support the Board's conclusion that a grant of the waivers requested would pose significant public safety hazards and would be contrary to the public interest.

The common pleas court quoted the following from the Board's written decision in regard to cul-de-sac length:

> [I]n addition to the vehicular use for the five lots shown on the proposed Plan and the occasional truck and vehicular traffic, it appears that a substantial number of vehicles are using and will use the roadway in question for access to the said parking lot and nursery a number of times a year. Such vehicular use of the proposed roadway warrants strict conformity to the requirements of the Township's ordinance for the safety and protection of the public traversing Fishing Creek Valley Road and those utilizing the proposed street. Unless there is an alternative means of reducing potential traffic, particularly mixed commercial and residential use traffic, (and none was presented), there is no basis for allowing the waiver.

Trial Court Opinion, p. 10. The Board's reasoning as to minimum curve radius was quoted as follows:

> Larger commercial vehicles that will use the road in question are unable to negotiate the turn without en-

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[2] Act of July 31, 1968, P.L. 805, *as amended*, added by Section 101 of the Act of December 21, 1988, P.L. 1329, 53 P.S. §11005-A.

> croachment into the oncoming lane of traffic. The mixture of truck traffic from the nursery, other traffic from other portions of developer's holdings, and the residential traffic from the proposed lots is only safe at the required minimum radius provided. The sharp curve radius at the bottom of the hill where steep slopes are present and immediately adjacent to the state highway results in an unsafe traffic flow condition based upon the anticipated mix of truck and automobile traffic.

Id. at 10-11. Finally, as to the requested bank slope waiver, the court quoted:

> The combination of mixed truck and automobile traffic, combined with steep grades and wooded vegetation, are grounds to deny the requested waiver because of a threat to public safety.

Id. at 11.

As to the use of the road for access to the 100-space parking lot illustrated on the plan, the common pleas court noted the lack of testimony on this point at the hearing. It criticized the Board for apparently going outside the record on this point, quoting a reference in the minutes of the meeting of September 7, 1993 to a discussion between the Board and Mr. Angino and his associate Charles K. Vandenburgh at the August 2 meeting concerning access to the parking lot from the cul-de-sac.

The common pleas court noted the considerable testimony at the hearing on the issue of traffic into the nursery. It referred to Mr. Angino's statement that ten to twenty big trucks a year use the gravel road, mainly for spring deliveries, and that a busy day may involve two trucks. It noted also Mr. Angino's admission that truck traffic had increased considerably because he and his wife were in the process of building

an "Italian Garden," and his reference to "tons of trucks" using the road, but stated that no evidence was presented that such traffic was other than temporary. The court concluded that the Board's reference to "occasional truck traffic" meant that it had accepted Mr. Angino's testimony on this point; hence the Board's conclusion that the traffic situation would be hazardous to the public "is completely overstated, as it involves only vehicular use for the 5 lots and only 10 to 20 large trucks per *year* to the nursery." Trial Court Opinion at 14 (emphasis in original).

On the issue of curve radius, the common pleas court acknowledged the testimony of the Township's witness Jerry Walls, that larger vehicles using the road could not negotiate the turn without encroachment into the oncoming lane of traffic. The court stated, however, that that testimony referred to the testimony of Applicants' engineer witness Weir Maxwell Shradely, Jr., who said that a smaller semi-trailer would necessitate only minor encroachment (an improvement over the existing situation) and that single units such as step vans or passenger cars could make the turn without encroachment. Because the proposed road would be wider and would be paved, the court stated that it would be safer than the existing one and that the Board should not have ignored such information in making its determination of public safety.

As to bank slope requirements, the common pleas court noted that no geologic survey was made of the area, and it reviewed the conflicting testimony as to whether the area in question was solid rock or loose, shaley rock, subject to erosion. It noted the approval by the Dauphin County Conservation District of Applicants' Erosion and Sedimentation Control Plan; the representation in that Plan that if something other than solid rock were encountered the Board would be informed and engineered retaining walls installed as necessary; the lack of direct testimony that sloughing would occur on to

the street itself ("which would present the most obvious safety hazard," Trial Court Opinion at 20) and the fourteen-foot area between the edge of the traffic lane and the bottom of the rock cut. The common pleas court concluded that substantial evidence supported a grant of the waiver regarding bank slopes.

Where the common pleas court took no additional evidence, this Court's scope of review is the same as that noted above. *Hart Realty Co., Inc. v. Wright Twp. Bd. of Supervisors*, 73 Pa. Commonwealth Ct. 117, 457 A.2d 240 (1983).[3]

III

In this Court's view the common pleas court exceeded the limited scope of its review in a case where it received no additional evidence. Rather than examining the record for evidence that a reasonable mind might accept as adequate to support the factual conclusions reached by the Board, the court appears to have engaged in factfinding of its own. The court relied upon the testimony of Mr. Angino to the exclusion of other evidence to reach its factual conclusion that the traffic situation involves only vehicular use for the five lots and only ten to twenty large trucks per year to the nursery.[4] In so doing,

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[3] As a preliminary matter, the Court rules upon the request of the Township in its reply brief to suppress certain exhibits attached to the brief of Applicants. There appears to be no dispute that the Township served Applicants with a designation of contents of reproduced record pursuant to Pa. R.A.P. 2154(a). Applicants did not serve and file a designation of parts of the record not included in the Township's designation. *Id.* Nor did they file a supplemental reproduced record pursuant to Pa. R.A.P. 2156. Accordingly, the exhibits attached to Applicants' brief that are not part of the reproduced record are suppressed, namely Exhibits J, L, M, N, O, P, Q, R, S, and T.

[4] The common pleas court implicitly rejected the position advanced by Applicants that because commercial traffic to the nursery is already in existence, it is irrelevant to a consideration of the subdivision application, that is, only the effects of traffic generated by the proposed new residences should have been considered by the Board. Applicants offer no citation in support of this position. This Court agrees that the situation actually existing after the grant of an application is what a board must evaluate to determine the effects on public safety, not a hypothetical and false situation that disregards a certain portion of traffic simply because that traffic existed before the application.

the court felt obliged to characterize the testimony of Applicant's witness Shradley as misstatement or as a reference to construction traffic although the testimony expressly addresses nursery traffic. As the Township points out, there were several other references to truck traffic including references in the testimony of Applicants' witness Vandenburgh. *See* N.T. at 24-25, 55-56, 99, 127-128.

The Township's witness Michael S. Keffer, from the consulting engineering firm, ultimately concluded that the mix of residential and commercial traffic could create a hazard. N.T. at 132. Jerry S. Walls, a county planning commission director appearing in his capacity as a consultant, testified that the area for which a bank slope waiver was sought had some outcroppings of rock but that "the soil and rock was of a weathering type which does fragment and slough off and does end up clogging the drainage ways," N.T. at 142, and noted the absence of a core borings to determine what really is there. N.T. at 158. He emphasized the necessity of the Board's considering the effect of the combined residential and commercial traffic, N.T. at 146, 153, and he concluded that the Board had "several ample reasons in the interest of public safety" to deny the application. N.T. at 165.

The common pleas court's statement that no evidence was presented that construction traffic was other than temporary in effect shifts the burden to Township to go forward on this point. This approach disregards the fact that Applicants are the moving party and that it is they who requested a number of waivers of ordinance provisions. Having admitted heavy use of the road in question by construction vehicles, Applicants had the burden of showing when such construction would cease and whether similar situations would arise in the future.

In this Court's view, it cannot be said as a matter of law that this record does not contain evidence from which a

reasonable mind might conclude that approval of the subdivision plan as submitted would pose a hazard to the public safety. The proposal here is not for a cul-de-sac on which five or six residences are situated. Rather, this proposal calls for five residential lots along a road that, despite a turnaround at 750 feet, continues on almost an equal distance to another lot, which is not a private residence but a commercial enterprise. That enterprise generates commercial traffic, including at least some tractor-trailer traffic. Experts testified that this combination of factors poses a hazard.

The common pleas court noted that Section 1001 of the Ordinance provides that where, owing to special conditions, literal enforcement of the provisions of these regulations will result in unnecessary hardship, the Township Board of Supervisors may make such reasonable alteration thereto as will not be contrary to the public interest and so that the spirit of the regulations shall be observed and substantial justice done. This is in accordance with the standard interpretation of Section 512.1 of the MPC,[5] relating to modifications of subdivision and land development ordinances. *See* 2 Robert S. Ryan, Pennsylvania Zoning Law and Practice §11.2.7 (1970) (Supp. 1994-1995). The Township's citation to *Appeal of Gregor,* 156 Pa. Commonwealth Ct. 418, 627 A.2d 308 (1993), and other cases elaborating upon the extremely high standard for a grant of a variance from a zoning ordinance provision based on "unnecessary hardship" under Section 910.2 of the MPC[6] are inapposite to this case involving a requested modification of a subdivision ordinance requirement.

Nevertheless, the public safety may not be compromised, even under the less stringent standard of Section 512.1 of the

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[5] Added by Section 40 of the Act of December 21, 1988, P.L. 1329, 53 P.S. §10512.1.

[6] Added by Section 89 of the Act of December 21, 1988, P.L. 1329, 53 P.S. §10910.2.

MPC. Where a common pleas court has received no additional evidence, and the record provides substantial evidence in support of a finding that modifications requested in particular circumstances would create a hazard, the courts may not substitute their own fact finding for that of a board of supervisors. *Valley View Civic Ass'n; Hart Realty Co.*

The order of the court of common pleas is reversed.

/s/DORIS A. SMITH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 2620 C.D. 1994

RICHARD C. ANGINO and ALICE K. ANGINO

v.

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP,

Appellant

ORDER

AND NOW, this 8th day of August, 1995, the request of the Board of Supervisors of Middle Paxton Township to suppress certain exhibits attached to the brief of Respondents is granted. The order of the Court of Common Pleas of Dauphin County is reversed.

/s/DORIS A. SMITH, Judge

CERTIFIED FROM THE RECORD

AND ORDER EXIT

AUG- 8 1995

/s/C.R. Hostutler

Deputy Prothonotary—Chief Clerk

7 FEBRUARY 1994 ARGUMENT COURT

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

NO. 2557 S 1991

CIVIL ACTION

LAND USE APPEAL

RICHARD C. ANGINO and ALICE K. ANGINO,

Appellants

v.

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP,

Appellee

BEFORE NATALE, TURGEON and EVANS, JJ.

OPINION

Presently before us is the Amended Land Use Appeal of Richard C. and Alice K. Angino from a decision of the Middle Paxton Township Board of Supervisors (Board), denying the Anginos' request for certain variances from the Township's Subdivision and Land Development Ordinance (Ordinance). For the reasons set forth below, we grant the appeal.

Factual and Procedural History

In 1971, the Anginos purchased 52 acres in a rural area of the Township for eventual development. Approximately 10 acres of that land, which adjoined State Highway Route 443 (Fishing Creek Valley Road), was slated for eventual development. The land in question sits on a relatively steep, rolling landscape (slopes of 15%-25%) and is predominantly woodland. (Certified Record-4) The area is generally of a rectangular shape and runs east and west along the north side of Route 443. Because of the contour of the land, the only feasible

entrance was near its southwest corner. In 1979, the Anginos sold a one acre lot near the entrance and the owner built a house and septic system subject to a 35-foot right-of-way for a common private road to the other acreage. The Anginos then built a private gravel road roughly parallel to the state road, with the approval of the Pennsylvania Department of Transportation (PennDOT). Currently, that road provides access to the Anginos' wholesale nursery which lies to the northeast of the 10-acre area.

In 1987, the Anginos took steps to develop the remaining acreage. Through their engineer, Rettew Associates, the Anginos presented a sketch plan to the Middle Paxton Township Planning Commission (Planning Commission) for development of six single-family lots and a proposed street leading into the development. The Planning Commission identified several areas of noncompliance with the Township Ordinance; specifically, as to the street's width, steepness of side slopes, curve radius and cul de sac (dead end street) length. In addition, in order to conform with the Township's right-of-way width requirement which had been increased to 50 feet in 1979, the Anginos repurchased the formerly sold property, paying between $15,000 to $20,000 over market price to do so. However, they could not otherwise conform with the remaining requirements.

On October 26, 1990, the Anginos filed a Preliminary/Final Subdivision Plan for a five-lot subdivision and development to be known as Fishing Creek Acres requesting variances from the Township's Ordinance. (R- 5-8) That Plan was then referred to the Planning Commission which pointed out numerous problems including special concerns with the proposed cul de sac length of 1200 feet and roadway width of only 12 feet. The Planning Commission suggested that the cul de sac be shortened to 750 feet, that the Anginos comply with the street width requirement of 18 feet and that they reduce to 4

the number of new lots. (R-17) At the request of the Anginos, the Plan was tabled in order to make several substantial revisions to address the Planning Commission's concerns. It is alleged by the Anginos that in addition to the overpayment to repurchase the property, they spent almost $50,000 more in order to comply with the Commission requests and obtain variance approval. (R-40 pp. 25-26)

On March 28, 1991, a revised Preliminary/Final Subdivision Plan was submitted to the Board. The revised Plan provided for only four lots and requested Ordinance variances as to (1) Section 501.i, limiting cul-de-sacs to 500 feet; (2) Section 501.g, requiring a center-line radius of 150 feet on all curves on minor-public streets; and (3) Section 501.k.1, requiring side slope banks of 3-to-1 (3 feet of horizontal measurement per 1 foot of vertical measurement) for fills. (R-2) The Anginos' revised Plan proposed a street 750 feet long, 18 feet wide including a 90-degree curve with a radius of 40 feet leading away from the "T" intersection with Route 443, and side slope of 1-to-1. (R-24)

The Planning Commission unanimously approved the revised Plan subject to certain conditions. (R-26) The Anginos therefore revised the Plan for a second time (R-30); however, on May 6, 1991, the Board rejected the revised Plan and variances by a 2-0 vote (with one abstention) on the basis of violations of the Ordinance (cul de sac length, minimum curve radius and steepness of slope). (R-31) Shortly thereafter, a rejection letter citing the same reasons for denial was forwarded to the Anginos. (R-32)

On appeal, this Court affirmed; however, on appeal to the Commonwealth Court, it held that the Board's rejection letter failed to comply with Ordinance Section 1004 which requires the Board to provide its grounds for denial in writing.[1] *Angino*

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[1] Ordinance Section 1004 provides:

> Whenever a request for the alteration of requirements is denied, the Township Board of Supervisors shall record its action for such denial in its

v. Board of Supervisors of Middle Paxton Township, No. 318 C.D. 1992 (Memo. Op., Jan. 27, 1993) at 13. The Court noted that the Anginos had requested variances because they knew their application violated certain Ordinance provisions and that by merely citing the Ordinance sections, the Board had failed to provide the grounds for denial. *Id.* The Court also noted that the Anginos' request for variances had been technically deficient pursuant to Ordinance Section 1002 and Section 512.1(b) of the Pennsylvania Municipalities Code (MPC)[2] because they had failed to state in full the grounds and facts of hardship on which the requested variances were based.[3] *Id.* at 17. The case was therefore remanded to this Court with instructions to remand it to the Board so that the Anginos could specifically set forth in their application their reasons for seeking waivers and that, if applicable, the Board could set forth its specific grounds for denial of the waivers. Accordingly, on May 6, 1993, this Court remanded the case directing the Board to render a written decision in compliance with Section 1004 of the Township's Ordinance.

On July 19, 1993, a public hearing was held before the Board on the revised Plan. Mr. Angino, who is an attorney, testified on his own behalf and also presented the testimony

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minutes. The Township Board of Supervisors action and the grounds for such denial shall be provided in writing to the applicant.

[2] Act of July 31, 1968, P.L. 508, *as amended*, 53 P.S. §10512.1.

[3] Ordinance Section 1002 provides:

> Applications for any alterations of requirements shall be submitted in writing by the applicant at the time the Preliminary Plan is filed with the Commission. The applicant shall state fully the grounds and all facts relied upon by the applicant.

MPC Section 512.1(b) provides:

> All requests for a modification shall be in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the ordinance involved and the minimum modification necessary.

of Anna Marie Bridick, a member of the Planning Commission in 1990 and 1991, Charles K. Vandenburgh, a realtor and land developer and Weir M. Shradley, Jr., an engineer employed by Rettew Associates as project manager in their municipal engineering section. The Board presented the testimony of Michael S. Keefer, an engineer with Light-Heigel and Jerry S. Walls, the Executive Director of the Lycoming County Planning Commission who also provides private consulting services as a planner.

On September 7, 1993, at a meeting of the Board, the Board voted 2-1 to deny the Plan and requested variances. Attached to the minutes of that meeting was a short statement of its reasons for denial. (R-54) A more detailed statement of the reasons for denial were contained in a three-page letter sent to the Anginos by certified mail on September 23, 1993 (the contents of which will be discussed below). (R-55) The Anginos have again appealed the decision of the Board to this Court.

Legal Issue

The Anginos raise two arguments: (1) that the Board failed to produce substantial evidence that the proposed variances would result in a public safety hazard and (2) that the Board is estopped from denying approval of the variances based on their approval of a 1979 Subdivision Plan.

Our scope of review, where no additional evidence has been taken, is limited to a determination of whether the Board committed a manifest abuse of discretion or an error of law in denying the requested variances. *Valley View Civic Association v. Zoning Board of Adjustment*, 501 Pa. 550, 462 A.2d 637, 639 (1983). An abuse of discretion will be found only where the Board's findings are not supported by substantial evidence. 53 P.S. §11010, *Valley View*, 462 A.2d at 640. Substantial evidence means such relevant evidence as a reasonable mind

might accept as adequate to support the Board's conclusion. *Id.*

The law is clear that a variance may be granted when strict application of the zoning ordinance would result in a unique burden which creates an unnecessary hardship peculiar to the subject property; provided that the grant of the variance does not adversely affect public health, safety, or welfare. *Malakoff v. Board of Adjustment of the City of Pittsburgh*, 72 Pa. Commw. 109, 113, 456 A.2d 1110, 1113 (1983). Further, variances should be granted " 'sparingly and only under exceptional circumstances.' " *Ottaviano v. Zoning Board of Adjustment of Philadelphia*, 31 Pa.Commw. 366, 368, 376 A.2d. 286, 288 (1977) (citations omitted).

With regard to the Anginos' second argument, they claim that the 1979 Subdivision Plan approved by the Board estops the Board from demanding changes in the design of the current Plan. It appears their argument is that because the current Ordinance requirements for street dimensions would necessitate destruction of the house and septic system (which will be discussed below) the Board's approval of the 1979 Plan somehow vests in them certain rights regarding the current Plan; however, this argument is without merit because the two plans are unrelated and the former Plan did not indicate a proposed street beyond the lot to be developed in 1979. (R-35; R-5)

We therefore turn to the Anginos' main argument. In denying the Anginos' Plan, the majority of the Board concluded that "[w]hile hardship factors are present in this case, a grant of the waiver requests poses significant public safety hazards and would be contrary to the public interest." We initially note that during the hearing on waivers, the Board raised the issue numerous times that the Anginos could explore an alternative access to the property since they own over

300 acres contiguous to the property proposed for development. (R-40 pp. 38, 84, 147-48) This suggestion is without merit since the Board's own conclusion that hardship factors existed necessitates the conclusion that the proposed entrance is the only feasible one. If a second access existed, the Anginos by choosing the proposed site, would have created their own "hardship," which is not legally sufficient to support a finding of hardship under the MPC. 53 P.S. §10910.2(a)(3).

The issue before us is whether there was substantial evidence before the Board to support its conclusion that a grant of the variance requests poses significant public safety hazards and would be contrary to the public interest. This inquiry first requires a review of the hardship factors which the Board admits exist.

The first 250 feet of the proposed street, starting from its entrance at Route 443, will be new while the remaining 500 feet or so will follow the existing gravel road. (R-40 pp. 38-39) In order for the entrance to conform to PennDOT specifications, the proposed street has a perpendicular (90-degree) entrance. (R-40 pp. 39, 54, 62) Currently, the entrance to the gravel road lies at a fairly flat angle whereby vehicles traveling east on Route 443 need not make a true left turn while vehicles from the west need to make an almost 270-degree right turn. (R-40 pp. 61-62) Pursuant to PennDOT specifications, the new street must extend from Route 443 several hundred feet further to the north to create the perpendicular entrance. The street then turns to the east at a proposed curve radius of 40 feet and in non-conformity with the Ordinance minimum of 150 feet. (R-40 pp. 54, 62)

The decision to propose a 40-foot curve radius was made because, after extending the street north the requisite depth, a curve with a radius of 150 feet would sweep through the existing house and septic system requiring their demolition.

(R-40 pp. 16, 64, 147-48) Therefore, the sharper curve was necessary. Further, were the location of the house and septic not a problem, the cost of creating a curve radius of 150 feet would nevertheless be prohibitively expensive because it would require extensive blasting of rock. (R-40 pp. 18, 57) Even the proposed 40-foot radius would require "a lot of blasting," and in fact the current gravel road required blasting. (R-40 pp. 18, 19, 93)

The 500 foot cul de sac limitation would allow for development of at most three lots. (R-40 pp. 42, 71) The road up to the existing house already consumes between 200 to 300 feet of the 500 feet allotment and lot sizes in this area must be a minimum of 1 acre. (R-40 p. 17) Further, the land cannot be developed to the south of the proposed street because of its steepness. (R-40 pp. 42, 71-72)

Accordingly, the Board's decision that hardship factors existed was certainly warranted. We now turn to the issue of whether the substantial evidence supported the majority's finding of significant public safety hazards contrary to the public interest.

The Board cited the following reasons for its denial of the requested variance regarding cul de sac length:

> As testified to at the hearing on July 19, 1993, both Mr. Vandenburgh and Mr. Angino indicated that a parking lot (which appears to have a capacity of approximately 100 cars as was illustrated on your Preliminary Land Development Plan for your entire acreage which was reviewed by the Board at their August 2, 1993 meeting) and nursery to the northeast of the proposed subdivision is, and will be, served by the cul de sac street shown on the Fishing Creek Acres Plan. Consequently, in addition to the vehicular use for the five lots shown on the proposed Plan and the occasional truck and vehicular traffic,

it appears that a substantial number of vehicles are using and will use the roadway in question for access to the said parking lot and nursery a number of times a year. Such vehicular use of the proposed roadway warrants strict conformity to the requirements of the Township's ordinance for the safety and protection of the public traversing Fishing Creek Valley Road and those utilizing the proposed street. Unless there is an alternative means of reducing potential traffic, particularly mixed commercial and residential use traffic, (and none was presented), there is no basis for allowing the waiver.

The Board cited the following reasons for its denial of the requested variance for a minimum curve radius:

> Larger commercial vehicles that will use the road in question are unable to negotiate the turn without encroachment into the oncoming lane of traffic. The mixture of truck traffic from the nursery, other traffic from other portions of developer's holdings, and the residential traffic from the proposed lots is only safe at the required minimum radius provided. The sharp curve radius at the bottom of the hill where steep slopes are present and immediately adjacent to the state highway results in an unsafe traffic flow condition based upon the anticipated mix of truck and automobile traffic.

Finally, with regard to the denial of the requested variance of a road bank slope from 3-to-1 to 1-to-1, the Board cited the following reason:

> The combination of mixed truck and automobile traffic, combined with steep grades and wooded vegetation, are grounds to deny the requested waiver because of a threat of public safety.

It is apparent from the Board's reasoning that the majority's overwhelming concern was with the mixed use of the street by traffic from the proposed lots together with traffic to the Anginos' nursery and parking lot. (See R-40, pp. 55-56) Indeed, on September 7, 1993, the Board had offered to approve the Plan and requested variances if the Anginos were to attach a condition that the street be restricted solely to residential use for the 4 proposed lots. The Anginos refused that condition.

Cul de sac length:

First, we conclude there was not substantial evidence presented to deny the variance on cul de sac length on the basis of public safety. Although cul de sac length is not regulated by PennDOT or the American Association of State Highway and Transportation Officials (AASHTO), the generally accepted safety purpose is to provide a safe access not only for residential traffic but for emergency vehicles, municipal service vehicles and other non-residential traffic such as fuel-delivery trucks. (R-48; R-40 pp. 104, 135, 161-62) A limit on cul de sac length provides for greater safety for those persons living near the end of the cul de sac in the event that the road becomes blocked. (R-40 p. 135) A 500 foot limit, while not unusual, provides the shortest cul de sac length in the region. (R-40 p. 67, R-47) Besides safety, another purpose behind this limitation is to better control cluster development and limit the density of dwellings. (R-40, pp. 68, 104)

In denying the variance for cul de sac length, the Board focused on the extra traffic created from the Anginos' other property, specifically from the nursery and a parking lot. Initially, we note that contrary to the Board's statement for denial, neither Mr. Angino nor Mr. Vandenburgh testified at the hearing that the proposed street will access a parking lot with a capacity of 100 cars. Although a drawing of the area

indicates such a lot does connect with the existing gravel road (R-53), there was no testimony offered regarding the parking lot and traffic which may currently be using the existing gravel road or will in the future use the proposed street to access it. The Board apparently received this information after the July 19, 1993, hearing as noted in the Board's short statement of reasons for denial of waivers attached to the minutes of its September 7, 1993 meeting:

> 4. In a discussion between the Developer and his representative, Kenneth Vandenburgh, with the Board of Supervisors at the Township meeting on August 2, 1993, Mr. Vandenburgh indicated that a parking lot to the northeast of the proposed subdivision ... is served by the cul de sac street shown on the proposed Subdivision Plan. Consequently, in addition to vehicular use for the five lots shown on the proposed Plan and the occasional truck traffic previously referred to by Mr. Angino it appears that a substantial number of motor vehicles are presently utilizing the roadway in question for access to the said parking lot a number of times a year. ..." (R-54)

The Board's use of information obtained from this alleged discussion as one of the main bases for denial of the waiver requests is completely unacceptable. First, there is no reference in the minutes of the August 2, 1993, meeting that such a discussion even took place. (R-51) Second, and more importantly, the Board had an opportunity at the hearing to raise the issue of the parking lot and its traffic implications on the subdivision plan (which would have constituted evidence) and would have allowed Mr. Angino the opportunity to present his evidence in rebuttal.[4] Clearly then, *no* evidence was presented

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[4] In fact, as alleged by Mr. Angino in the Anginos' Amended Land Use Appeal, (which is also outside the record), the vehicles which use the parking lot do so once a year for an annual benefit and do not use the gravel road but rather the Angino's private drive.

to support the Board's statement that "in addition to the vehicular use for the five lots shown on the proposed Plan and the occasional truck and vehicular traffic, *it appears that a substantial number of vehicles are using and will use the roadway in question for access to the said parking lot and nursery a number of times of year.*"

There was considerable testimony, however, on the issue of traffic into the nursery. Mr. Angino testified that at a maximum, 10 to 20 big trucks use the gravel road per year to access the nursery, mainly with Spring deliveries, and that a busy day may involve two trucks. (R-40 p. 99) Mr. Angino did admit that traffic on the gravel road had increased considerably because he and his wife were in the process of building an "Italian Garden" on land immediately to the north of the nursery. (R-40 p. 99, R-53) At the time, Mr. Angino stated that "tons of trucks" were using the gravel road to access the gardens but that the construction was not associated with the nursery, which has been in operation since the early 1970's. (R-40 pp. 99, 101) There was no evidence presented that the traffic to and from the Italian Garden was anything but temporary.

The Board notes that the Anginos' witness Weir Shradley, Jr. stated that traffic to the nursery (at the time of the hearing) involved 10 to 20 twenty trucks per *day* (R-40 p. 91-92); however, it would appear that Mr. Shradley either made a misstatement, meaning 10 to 20 trucks per year or he was referring to traffic to the Italian Garden as well. In any event, the Board clearly accepted the testimony of Mr. Angino on this point referring in its decision to the "occasional truck traffic" to the nursery. (R-54, 55) Therefore, the Board's statement that the traffic situation would be hazardous to the public is completely overstated as it involves only vehicular use for the 5 lots and only 10 to 20 large trucks per *year* to the nursery.

Besides its reference to a supposed high volume of mixed traffic, which was not borne out by the evidence, no other

reason was cited for the denial. Therefore, we find the substantial evidence did not support the conclusion that an extra 250 feet of street would be harmful to the public particularly in light of the limited number of lots to be served and that the record indicated in an emergency, the proposed street and nursery could be accessed through the Anginos' private driveway. (R-40 pp. 45, 52; R-46) Furthermore, the Board's own witness, Michael Keefer, testified that he had no problem with the cul de sac length of 750 feet. (R-40 pp. 129-30)

Minimum center-line curve radius:

We also conclude there was not substantial evidence of a public safety hazard offered by the Board in support of its decision denying the variance on minimum curve radius. Pursuant to the guidelines of AASHTO, a curve radius of 150 feet is designed to allow vehicles travelling on a minor street at 35 miles per hour to move freely through the curve without necessitating stopping, backing up or encroachment into oncoming traffic. (R-40 pp. 60, 62, 107, 144-45; R-48) It further provides for the proper sight distances for oncoming traffic and traffic entering the street from driveways. (R-40 p. 107) The curve in question is located near the entrance to Route 443. Therefore, the design speed of 35 miles per hour is not an issue because vehicles will be preparing to make a stop at the intersection with Route 443 or will have just entered onto the street from Route 443 after making a 90-degree turn. (R-40 pp. 60-61, 83)

In denying the variance request, the Board cited the mixed use of the proposed road by residential traffic, nursery traffic and "other traffic from portions of developer's holdings," specifically finding that "[t]he sharp curve radius at the bottom of the hill where steep slopes are present and immediately adjacent to the state highway results in an unsafe traffic flow based upon the anticipated mix of truck and automobile

traffic." As was discussed above, no testimony was offered with regard to traffic from the Anginos' other holdings (including the parking lot) beyond temporary traffic to the Italian Garden and 10 to 20 trucks per year to the nursery.

Another safety reason cited by the Board was that "[l]arger commercial vehicles that will use the road in question are unable to negotiate the turn without encroachment into the oncoming lane of traffic." Certainly, encroachment by large trucks into oncoming lanes of traffic poses a legitimate safety concern and this hazard was raised by the Board's witness Jerry Walls. (R-40 pp. 143-45) His testimony referred to previous testimony given by the Anginos' witness Weir Shradley, Jr. (R-40 p. 144) Mr. Shradley testified that currently a WB-40 (a 50-foot semi-trailer) travelling from the east on Route 443 and turning right onto the gravel road, which is the most difficult turn to make at the intersection, would be encroach into the oncoming lane of traffic. (R-40 p. 62) However, based upon a template made of the new entrance and curve, he testified that the same turn by a WB-40 would necessitate only minor encroachment, an improvement over the existing situation. (R-40 pp. 62-63, 82) Furthermore, it was not contested that single units such as a step van type vehicle and passenger cars could make the same turn on the proposed street with no encroachment. (R-40 p. 62) Although he testified that a WB-50 could not make this turn, it is unclear whether he was referring to the current situation with the gravel road or with the proposed entrance. (R-40 p. 84) In addition, there was no testimony offered that WB-50 tractor trailers use or will use the road.

Although the exact types of trucks which access the nursery was not specified, it was testified to that present nursery traffic included only small tractor-trailers as well as small delivery trucks. (R-40 p. 92) We find it difficult to conclude that this modest potential for encroachment by a few,

if any, trucks per year constitutes substantial evidence of a safety hazard. (R-40 p. 45, 82) Furthermore, in determining the safety hazard posed by the proposed street, the Board chose to ignore evidence that the proposed street will actually be safer than the existing gravel road.[5] (R-40 pp. 25, 56, 63, 93-95) In addition to the improved radius, to which Mr. Shradley testified, the proposed street will add blacktop and widen the road from 12 to 18 feet. Anginos' witness Kenneth Vandenburgh testified as follows:

> Q: Would the road be a lot safer if the unanimous recommendations of the Planning Commission had been adopted by the Board of Supervisors?
>
> A: Yes, and in fact, we were told that by PennDOT because this would have pushed our access back and made more of a safe entry onto Fishing Creek Valley Road. ... (R-40 p. 25)

Route 443 is the main thoroughfare through Middle Paxton Township and regardless of whether the new street is built, nursery traffic will continue to enter onto Route 443 from the existing gravel road. The record is therefore clear that public safety would be better served by the proposed street. The same

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[5] The testimony of both Board witnesses would seem to affirm this. Mr. Walls did admit that in theory the proposed street would be safer although he qualified his remarks by stating that safety improvements may induce a different kind of driving behavior which may give rise to additional accidents. (R-40 pp. 155-157) He agreed, for instance, that a curve-radius of 150 feet may actually be more dangerous than the proposed 40-foot curve radius. (R-40 pp. 157-58)

The testimony of Mr. Keefer also implied that the proposed improvement will be safer. His testimony was that the new entrance and shortened radius will actually promote vehicles making a left turn into the development to not make a true turn. (R-40 p. 109) Incredibly, he testified that vehicles travelling on Route 443 at thirty-five miles per hour could manage a left turn into the development, despite its ninety-degree entrance, without having to slow down. (R-126 p. 124-25) Applying Mr. Keefer's logic to the current situation, a vehicle turning left could enter the gravel road at a speed considerably higher than thirty-five miles per hour since the angle is much flatter than ninety degrees—a more dangerous situation.

is true with the Board's concern with potential future use of the road.[6] The Board should have considered the safety improvement aspects of the proposed Plan. This is not to imply that the waivers should have been granted simply because the proposed street would be safer than over the current situation but that in considering the public interest, such information should not have been ignored by the Board.

Bank Slope:

Finally, we conclude there was not substantial evidence offered or cited to deny the variance as to bank slope on the basis of public safety. The safety purpose behind limiting bank slope steepness is to provide a minimum area for vision and to reduce erosion of the road bank into the drainage ditch or onto the roadway. (R-55) Testimony indicated that the proposed slope of 1-to-1 would not impair motorists' vision. (R-40 pp. 82-83)

The bank in question, where a 1-to-1 slope is requested, occurs in first 100 to 200 feet of the proposed street. (R-40 p. 65) The slope occurs only to one side of the proposed 18-foot wide street. The road and the bank are separated by a 2-foot wide shoulder and a 12-foot wide swale which provides drainage. (R-40 pp. 85-86) Although no geologic survey was made of the area, the Anginos' witnesses, Mr. Vandenburgh and Mr. Shradley, testified that the area in which the 1-to-1 slope was requested consists of solid rock for which such a slope would be appropriate. (R-40 pp. 22, 64-65, 88) In addition, Board witness Mr. Keefer agreed that the material appeared to be solid ledge rock. (R-40 p. 130) Mr. Angino and Mr. Shradley testified that the bank now existing required dynamiting and

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[6] Mr. Angino had testified that it was the intention of he and his wife that the Italian Garden become a public facility as provided for in their wills and that although he did not foresee that the proposed street would access the Italian Garden he could not state so with certainty. (R. p. 101-102)

that no accumulation of stone has been observed in the swale nor had it ever required cleaning. (R-40 pp. 93, 159)

Mr. Walls, on the other hand, testified that the material was not solid rock but was loose shaley rock and soil subject to erosion. (R-40 p. 142) Mr. Walls stated that such a condition could lead to clogged drainage and that nearby sites (not on the proposed subdivision) showed evidence of substantial erosion. (R-40 p. 142)

First, we note that Mr. Walls testimony would appear to be contradicted by the decision of the Dauphin County Conservation District. Pursuant to Ordinance Section 505(a)(4)(d), whenever earthmoving is proposed, the developer must prepare an Erosion and Sedimentation Control Plan and consult with the Conservation District for the purpose of controlling erosion and reducing sedimentation. (R-2) The Anginos' Erosion and Sedimentation Control Plan was approved by the Conservation District on May 24, 1991. (R-33)

Second, it was proposed in the Erosion and Sedimentation Control Plan that if something other than solid rock was encountered during construction of the side slope, that the Board would be so informed and engineered retaining walls would be provided where necessary. (R-28; R-40 pp. 22, 65)

Third, there was no direct testimony presented that subsidence or sloughing would occur onto the street itself which would present the most obvious safety hazard. In addition, there would be a fourteen foot area between the edge of the traffic lane to the bottom of the rock cut which could contain any erosion. (R-40 pp. 85-86) The substantial evidence presented, therefore, requires that the variance on slope should have been granted.

Finally, we cite to Ordinance Section 1001 which states as follows:

> Where, owing to special conditions, literal enforcement of the provisions of these regulations will result in unnecessary hardship, the Township Board of Supervisors, on the recommendation of the Commission, may make such reasonable alteration thereto as will not be contrary to the public interest and so that the spirit of these regulations shall be observed and substantial justice done. (R-2)

The decision of the Board to deny their variance requests provides a perfect example of a decision made against the spirit of the Ordinance which has resulted in a substantial injustice.

Accordingly, we enter the following:

ORDER

AND NOW, this 16th day of September 1994, the Amended Land Use Appeal filed by Appellants Richard C. and Alice K. Angino is GRANTED and the decision of the Appellee, Board of Supervisors of Middle Paxton Township, denying Appellants' Subdivision Plan is reversed. Appellants' request for costs and counsel fees is DENIED.

BY THE COURT:
/s/Jeannine Turgeon, Judge

Distribution:
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9/16/1994
I hereby certify that the foregoing is a true and correct copy of the original filed.
/s/Stephen C. Farina
Prothonotary

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 318 C.D. 1992

RICHARD C. ANGINO and ALICE K. ANGINO,

Appellants

v.

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP,

Appellee

No. 320 C.D. 1992

RICHARD C. ANGINO and ALICE K. ANGINO,

Appellants

v.

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP,

Appellee

ARGUED: September 16, 1992

BEFORE: HONORABLE MADALINE PALLADINO, Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE FRANCIS A. BARRY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION

BY JUDGE McGINLEY FILED: January 27, 1993

Richard C. and Alice K. Angino (Anginos) appeal from an order of the Court of Common Pleas of Dauphin County (trial

court) that affirmed the rejection of the Anginos' proposed subdivision plan by the Board of Supervisors (Supervisors) of Middle Paxton Township (Township).[1] Where, as here, the trial court took no additional evidence the scope of this court's review is limited to determining whether the local governing body abused its discretion or committed an error of law. *Stein v. Easton Township Board of Supervisors*, 110 Pa. Commonwealth Ct. 293, 532 A.2d 906 (1987).

In 1971 the Anginos purchased fifty-two acres in a rural area of the Township for eventual development. At issue here is a roughly rectangular ten-acre portion of that property running east and west along the north side of a state highway. Because of the steep slope up from that highway, the property has access only from a point near the southwest corner. In 1979 the Anginos received approval to build a residence on a one-acre lot near the entrance. They built a house and sold that property subject to a thirty-five-foot right-of-way for a common private road to the other acreage. They also built a private gravel road roughly parallel to the state road, with approval of the Pennsylvania Department of Transportation.

In June of 1987 the Anginos, through their engineers, Rettew Associates (Rettew), presented a sketch plan to the Middle Paxton Township Planning Commission (Planning Commission) for development of six single-family lots on the remaining nine acres. The record of that meeting reflects that several problems were identified, including the width of the access road, side slopes and the need for "a variance on cul de sac length." Minutes of the Planning Commission of June 8, 1987; Reproduced Record (R.R.) 166a. The Anginos repur-

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[1] The Anginos' land use appeal is No. 318 C.D. 1992. They also filed an appeal at No. 320 C.D. 1992 from the trial court's dismissal of their complaint seeking an injunction and declaratory and other relief in relation to the same matter. That appeal was argued together with No. 318, and the present opinion disposes of both appeals.

chased the formerly sold property, which permitted a wider right-of-way across it. Because of the mountainous nature of the terrain they were unable to comply with the ordinance requirements for a curve radius of 150 feet at the point where the private road met the state highway (which would require blasting through solid rock and tearing down the existing house) or the prohibition against any cul-de-sac with a length in excess of 500 feet or the specified slope of banks along the private road.

On October 26, 1990, through Rettew, the Anginos filed with the Township a "Preliminary/Final Subdivision Plan" (application) describing six new lots. The application requested waivers of four requirements of the Middle Paxton Subdivision and Land Development Ordinance (Ordinance): (1) Section 401.a, requiring submission of a preliminary plan; (2) Section 501.i, limiting cul-de-sacs to 500 feet; (3) Section 501.g. requiring a center-line radius of 150 feet on all curves on private roads; and (4) Section 501.h, requiring an eighteen-foot cartway for a private street with four to ten lots. The application did not expressly state reasons for the requested waivers, except as to the curve requirement, which was said to be "due to the existing home and maintaining an adequate entrance to satisfy PennDOT requirements." R.R. 203a.

The application was referred to the Planning Commission. The Planning Commission raised numerous concerns, and the Anginos requested successive postponements of consideration in writing, expressly waving time limitations. The Anginos had Rettew make several substantial revisions in an attempt to comply with the concerns raised, allegedly at a cost of some $25,000. On February 7, 1991, Rettew submitted a revised application to the Planning Commission. The revised application was for four additional buildable lots served by a private road with a ninety-degree curve (radius forty feet) leading away from the "T" intersection with the state road

(Curve C-4), cartway width of eighteen feet and a length of 750 feet. The four members of the Planning Commission present at the meeting of April 8, 1991, unanimously approved the revised application subject to certain conditions. R.R. 275a-76a. They advised the Anginos of that action in a letter of April 19, 1991, signed by J. Thomas Van Wagner, "Secretary-Supervisor," who is a Supervisor but not a member of the Planning Commission. R.R. 279a-80a.

At the Supervisors' next meeting on May 6, 1991, they rejected the application (Supervisor Van Wagner and one other voted to reject and the third abstained), listing in the minutes lack of compliance with specific ordinance sections as the reason. R.R. 283a. The Township's solicitor informed the Anginos of this rejection in a letter stating:

> Please note that the request for a variance regarding the length of the cul-de-sac was also denied by the Supervisors at the meeting.
>
> The reasons why the Plan has been denied include violation of Section 501g. with respect to Curve C-4, which does not meet the minimum radius of the center line for the curve as provided in the ordinance; violation of Section 501i. addressing the length of the cul-de-sac street which is substantially in excess of the requirements of the Ordinance; and violation of Section 501k.1. which addresses the slope of banks along streets, which requirements are substantially exceeded by the banks along street 'A' of the Plan.
>
> We would also note that the Board of Supervisors did not agree to grant you a variance with regard to the slope requirements of Section 501k. of the Ordinance.

R.R. 286a.

The Anginos contend that they are entitled to a deemed approval of their subdivision plan on the basis of failure of the

Supervisors to comply with: (1) Section 508 of the Pennsylvania Municipalities Planning Code (MPC),[2] requiring the governing body of a municipality to issue a letter of rejection specifying defects found in the application and ordinance requirements that have not been met; (2) Section 1004 of the Ordinance, requiring the Supervisors to record their denial of a request for an alteration of requirements in the minutes along with the grounds for such denial and to communicate the same information to the applicant in writing; and (3) principles of equity and estoppel.

Section 512.1 of the MPC,[3] relating to modifications provides as follows:

> (a) The governing body or the planning agency, if authorized to approve applications within the subdivision and land development ordinance, may grant a modification of the requirements of one or more provisions if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question provided that such modification will not be contrary to the public interest and that the purpose and intent of the ordinance is observed.
>
> (b) All requests for a modification shall be in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the ordinance involved and the minimum modification necessary.
>
> (c) If approval power is reserved by the governing body, the request for modifications may be referred to the planning agency for advisory comments.

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[2] Act of July 31, 1968 P.L. 508, *as amended*, 53 P.S. §10508.

[3] Added by Section 40 of the Act of December 21, 1988, P.L. 1329, 53 P.S. §10512.1.

(d) The governing body or the planning agency, as the case may be, shall keep a written record of all action on all requests for modifications.[4]

Sections of the Ordinance relating to the power to grant modifications and the manner of application provide:

SECTION 1001.

Where, owing the [sic] special conditions, a literal enforcement of these regulations will result in unnecessary hardship, the Township Board of Supervisors, on the recommendation of the Commission, may make such reasonable alteration thereto as will not be contrary to the public interest and so that the spirit of these regulations shall be observed and substantial justice done.

Moreover, the Board of Supervisors may waive any of the requirements of this Ordinance if it determines that certain details or specifications are not necessary to be shown on a plan in order to insure that the Plan conforms with the standards of good planning and engineering and will not have a deleterious effect on neighboring property.

SECTION 1002.

Applications for any alterations of requirements shall be submitted in writing by the applicant at the time the Preliminary Plan is filed with the Commission. The

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[4] *See also* Section 503(8) of the MPC, added by Section 32 of the Act of December 21, 1988, P.L. 1329, 53 P.S. §10503(8), providing that the subdivision and land development ordinance may include:

> Provisions for administering waivers or modifications to the minimum standards of the ordinance in accordance with Section 512.1, when the literal compliance with mandatory provisions is shown to the satisfaction of the governing body or planning agency, where applicable, to be unreasonable, to cause undue hardship, or when an alternative standard can be demonstrated to provide equal or better results.

applicant shall state fully the grounds and all facts relied upon by the applicant.

Section 508 of the MPC, relating to approval of plats provides that applications shall be acted upon within such time limits as are fixed in the ordinance, subject to specified restrictions. The section further provides:

> (1) The decision of the governing body or the planning agency shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address not later than 15 days following the decision.
>
> (2) When the application is not approved in terms as filed the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite to the provisions of the statute or ordinance relied upon.
>
> (3) Failure of the governing body or agency to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of communication of the decision, in which case, failure to meet the extended time or change in manner of presentation of communication shall have like effect. (Emphasis added.)

The provision of the Ordinance relating to denials of requests for modifications of ordinance requirements is as follows:

> SECTION 1004.
>
> Whenever a request for the alteration of requirements is denied, the Township Board of Supervisors shall record its action and the grounds for such denial in its minutes. The township Board of Supervisors action *and*

the grounds for such denial shall be provided in writing to the applicant. (Emphasis added.)

The Anginos contend that the Supervisors' letter to them, quoted above, violates Section 508(2) of the MPC and Section 1004 of the Ordinance and entitles them to a deemed approval. They cite to cases upholding deemed approvals where the rejection letter failed to specify the ordinance sections that were violated or the particular defects of the plan and where a zoning hearing board failed to comply with the provisions of Section 908(9) of the MPC, 53 P.S. §10908(9), requiring that body to render a decision "accompanied by findings of fact and conclusions based thereon together with the reasons therefor."

The Supervisors assert that all that is required of them under Section 512.1(d) of the MPC is that they make a record in the minutes of the denial of the modification request, and they did that. Further, they argue that the burden is on the applicant to establish undue hardship and that the requested waiver is the minimum necessary to afford relief; the burden is not on the Supervisors to justify the denial of a waiver. They assert that the Anginos' requests for waivers, although in writing, did not state fully the reasons for the requests, as required by the MPC and the ordinance; therefore, reasons advanced by the Anginos in their brief to this court are not of record and may not be considered. They argue that that portion of the rejection letter noting specific defects and citing to specific ordinance provisions satisfies the letter and the spirit of Section 508(2) of the MPC.

The courts consistently, and frequently, have held that the provisions of Section 508(2) of the MPC are mandatory. In *Coretsky v. Board of Commissioners of Butler Township*, 520 Pa. 513, 555 A.2d 72 (1989), the Supreme Court held that the harshness of the result of deemed approval of a plan not in compliance with certain ordinance provisions relating to roads

could not justify deviation from the plain meaning of the statute, which requires a rejection letter to specify particular ordinance sections violated, and no exception based on actual or presumed knowledge of the applicant is proper.

However, relatively few Section 508 cases have involved requests for modifications or waivers of ordinance requirements (sometimes referred to as "variances"). In *Township of O'Hara v. DiSilvo*, 51 Pa. Commonwealth Ct. 50, 413 A.2d 1174 (1980), an applicant submitted a request for a variance from a right-of-way width requirement separate from his preliminary subdivision plan.[5] Both applications were technically deficient under the ordinance, but the township did not inform the applicant of any deficiencies within the thirty-day period provided in the ordinance. The council referred the variance request to the planning commission and then formally rejected the request some ten months after it was filed. The case came to this court on the township's appeal from the court of common pleas' grant of peremptory judgment to the applicant in his action in mandamus to compel approval of the preliminary plan and of the variance. Although noting the irregular conduct of both sides, we held that, where the subdivision application and the variance request were so factually, statutorily and legally intertwined, the applicant's failure to meet technical filing formalities did not outweigh the township's failure to object timely under the ordinance or to render a decision on the plan or the variance within ninety days as required by Section 508. We affirmed.

More recently, in *Dobrinoff v. Board of Supervisors of Franklin Township*, 136 Pa. Commonwealth Ct. 282, 582 A.2d 1156 (1990), the applicant resubmitted a plan requesting

[5] The events of this case took place long before the 1988 enactment of Section 512.1, with its requirement in subsection (b) that any request for modification accompany and be part of the application for development.

waiver as to the remaining two points of noncompliance. The board's letter informing him of rejection stated that the board denied the requests for modification and that the plan was disapproved for failure to comply with the ordinance and with a stipulation that he would obtain a sign-off from all persons who purchased lots based on the previously approved plan, which he sought to modify. We stated that there was no need for the board's decision to echo the section numbers for which the applicant had sought a waiver, and that information concerning the failure to obtain the consent of other owners adequately informed him of the reason for denial so that he could attempt to comply or could appeal to common pleas court.

Also pertinent to this discussion is *Board of Supervisors of Venango Township v. Radu*, 103 Pa. Commonwealth Ct. 363, 520 A.2d 514 (1987). There an owner had sought a conditional use permit from the board of supervisors to operate a tavern in a residential district, pursuant to former Section 603(b)(2) of the MPC, which provided for allowance of conditional uses by the governing body.[6] The ordinance directed that the board of supervisors should render a written decision and inform the applicant within thirty days of their decision on the application. No written decision was issued, although there was oral notification. The common pleas court granted a deemed approval on the basis that no written decision was issued within forty-five days after the last hearing, as required by Section 908(9) of the MPC, 53 P.S. §10908(9). On the township's appeal this court pointed out that Section 908(9) applies to decisions of the zoning hearing board, not the governing body. Although the board of supervisors failed to comply with the applicable ordinance provision, the ordinance

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[6] The same provision now appears in Section 603(c)(2) of the MPC, as reenacted and amended by Section 47 of the Act of December 21, 1988, P.L. 1329, 53 P.S. §10603(c)(2).

did not specify the consequence of such noncompliance. We held that the common pleas court erred in ordering a deemed approval, and we remanded for a written decision from the board of supervisors, in compliance with the requirements of the ordinance, so that the owner might take such further action as was appropriate.

In the present case, the Supervisors' rejection letter complied with the requirements of Section 508(2) of the MPC relating to the manner of notice of a rejection of a subdivision plan. It referred to specific defects (the radius of Curve C-4, the length of the cul-de-sac and the slope of banks) and to the controlling ordinance sections. But the rejection letter failed to comply with the requirement of Section 1004 of the Ordinance that when the Supervisors deny a request for an alteration of subdivision ordinance requirements, they must provide the applicant with the "grounds" for that denial. When the two sentences of the rejection letter informing the Anginos of the denial of the "variance" requests are read separately from the paragraph listing specific defects and ordinance provisions violated, the letter provides no reason whatsoever for the denials. If the letter is read as a whole to mean that the variance requests are denied because of violation of the cited sections, then it provides a "reason" but explains nothing. The Anginos requested waivers *because* they knew their application violated certain ordinance provisions—such a "reason" for denial conveys no new information. Here the Township voluntarily chose to impose a duty on the Supervisors beyond that required by the MPC when it adopted a proviso that requires the Supervisors to set forth the "grounds" for denial.

The Supervisors' only response to the claim that they violated Section 1004 of the Ordinance is their assertion that the Anginos' requests for variances were technically deficient.[7]

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[7] In view of the contents of the rejection letter, the Supervisors can not assert that they provided the Anginos a statement of the grounds for the denial of the waiver requests. The Anginos' Motion to Compel Discovery and the Holding of a

On other occasions we have stated that township supervisors may not rebut a claim of deemed approval by asserting that an application for a grading permit did not meet the technical application guidelines of the ordinance, where the supervisors did not actually deny the application on those bases. *Rodier v. Township of Ridley*, 141 Pa. Commonwealth Ct. 117, 595 A.2d 220 (1991) (citing *Township of O'Hara v. DiSilvo*, noted above). Here the Supervisors expressly ruled on the waiver requests (by denying them), and they can not now say that those requests were technically deficient originally. In fact, the Supervisors acted quite to the contrary, and the application was referred to the Planning Commission as a proper application, and that body made numerous demands for changes over the course of a year and a half.

As was the case in *Board of Supervisors of Venango Township*, this Ordinance does not specify consequences for failure to comply with Section 1004. Because the MPC does not contain a provision equivalent to Section 1004, requiring a written statement of reasons for a denial of a modification request, we disagree with the Anginos' contention that the Supervisors' violation of Section 1004 entitles them to a deemed approval under Section 508(3) of the MPC. Instead,

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Hearing to Take Evidence, filed with the trial court, alleges that the rejection letter did not respond to the variance request or give any reasons for the denial, and that the variance denial did not include any findings of fact or basis or evidence for that denial. ¶¶9, 11; R.R. 79a. The Supervisors' Response to that motion states that the rejection letter did respond to the variance requests: "[T]hey were specifically denied." Response ¶9; R.R. 82a. The Response further *admits* that the denial did not include any findings of fact, but states that the denial was based on the plan as submitted and revised, the written requests for waivers and application of the Ordinance. *Id.* ¶11; R.R. 83a. Finally, the Response denies that the Supervisors are "under any affirmative obligation under the Pennsylvania Municipalities Planning Code to provide any statement of the grounds for the denial of the variance to [the Anginos]." but it does not acknowledge the different requirements of Section 1004 of the Ordinance. *Id.* ¶12; R.R. 83a. In this pleading the Supervisors essentially admit that their rejection letter does not comply with their own Ordinance.

as in *Board of Supervisors of Venango Township*, we remand for a written decision in compliance with Section 1004 of the Ordinance.[8]

Once the Supervisors have provided a decision stating the reasons for the denials of the waiver requests, the Anginos will be in a position to state their reasons for appeal to the trial court if need be.[9] For example, if the Supervisors assert that Curve C-4 is unsafe as proposed, the Anginos will be able to argue to the trial court and to present evidence if necessary that the curve is safe.[10]

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[8] This result does not conflict with our approval of a similar waiver denial in *Dobrinoff*, because in that case there was no mention of or reliance on an ordinance provision similar to Section 1004.

[9] *Compare Noll v. Stewart*, 57 Pa. Commonwealth Ct. 539, 427 A.2d 710 (1981), which explains that the reason for the requirement of Section 508(2) of the MPC that a rejection letter specify defects of the plan and ordinance sections violated is to assure that an unsuccessful applicant has specific reasons for the disapproval on which to base a possible appeal.

[10] Pursuant to Section 1005-A of the MPC, added by Section 101 of the Act of December 21, 1988, P.L. 1329, 53 P.S. §11005-A, if, upon motion, it is shown that proper consideration of a land use appeal requires the presentation of additional evidence, the court may hold a hearing, it may remand to the body whose decision is under review or it may refer the case to a referee. The decision whether to receive additional evidence is within the discretion of the trial court. *See Fine v. Zoning Board of Adjustment*, 410 Pa. 487, 190 A.2d 144 (1963). Continuing with the example, we note that the Planning Commission presumably concluded that Curve C-4 was safe when it recommended approval of that waiver, hence there was no need for the Anginos to present evidence on that issue before the Commission. Should the Supervisors' statement of reasons on remand for denying the variance requests raise factual issues not fully developed on the existing record, proper consideration of the land use appeal under Section 11005-A may require the receipt of additional evidence. Finally, we observe that, although fundamental health, safety and welfare concerns may not be compromised, the standards for granting a modification of a subdivision ordinance requirement under Section 503(8) of the MPC, see n.4 above, are not as strict as those for the granting of a variance from zoning ordinance requirements under Chapter 9 of the MPC. *See* 2 Robert S. Ryan, Pennsylvania Zoning Law and Practice §11.2.7 (1970) (Supp. 1991-1992):

> The blanket authority granted by §512.1 is similar to the power of a zoning hearing board to grant a variance in zoning matters in the sense that it is tied to 'peculiar conditions' pertaining to the land in question, and that any modification of the ordinance must not be contrary to the public interest.

To date both parties in this dispute have contributed to its tangled state—the Anginos failed to comply with the express requirements of the MPC and the Ordinance regarding the contents of an application for a waiver, and the Supervisors failed to comply with the clear and express requirement of the Ordinance relating to the manner of denial of a waiver application. In view of our determination that this case must be returned to the Supervisors for a decision in compliance with the Ordinance, we conclude that the action appealed at No. 320 C.D. 1991, relating to the Anginos' complaint seeking declaratory, injunctive and other relief, is moot. Having been denied deemed approval under Section 508(3) of the MPC, the Anginos have nothing to enforce in an alternative action.

/s/Bernard L. McGinley, Judge

However, the 'undue hardship' criteria ought not to be read as the equivalent of the very stringent 'unnecessary hardship' criteria defined by the decisional law and by Code §910.2(1) and (2), 53 P.S §10910.2(1) and (2). ... Code §503(8) appears to permit the municipality to enact a more lenient standard for waivers and modifications of subdivision regulations provided the municipality does not stray beyond the limits of that Section.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 318 C.D. 1992

RICHARD C. ANGINO and ALICE K. ANGINO,

Appellants

v

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP,

Appellee

No. 320 C.D. 1992

RICHARD C. ANGINO and ALICE K. ANGINO,

Appellants

v.

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP,

Appellee

ORDER

AND NOW, this 27th day of January 1993 the order of the Court of Common Pleas of Dauphin County at No. 2557 S 1991, entered January 23, 1992, is vacated. This case is remanded with instructions to remand to the Board of Supervisors of Middle Paxton Township for that body to render a decision in compliance with Section 1004 of the Middle Paxton Township Subdivision and Land Development Ordinance, which requires that the Supervisors provide in writing the

grounds for the denial of an application for an alteration of requirements of the Ordinance.

The appeal from the order of the court at No. 4972 Equity 1991, entered January 23, 1992, is dismissed as moot.

Jurisdiction relinquished.

/s/BERNARD L. McGINLEY, Judge

CERTIFIED FROM THE RECORD
AND ORDER EXIT
JAN 27 1993
/s/C.R. Hostutler
Deputy Prothonotary—Chief Clerk

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

NO. 2557 S 1991

RICHARD C. ANGINO and ALICE K. ANGINO

vs.

BOARD OF SUPERVISORS OF MIDDLE PAXTON TOWNSHIP

BEFORE MORGAN, SCHAFFNER AND NATALE, JJ.

OPINION

Richard C. Angino and Alice K. Angino appeal the denial of approval of their land subdivision plan by the appellee, the Board of Supervisors of Middle Paxton Township. The appellants raise two issues in their brief. For the following reasons, we reject both of these arguments and affirm the decision of the Board.

The Anginos first argue that the variances they sought were granted automatically by operation of law because the Board delayed its decision. The Anginos quote the following provision of the Municipalities Planning Code

> All applications for approval of a plat (other than those governed by Article VII), whether preliminary or final, shall be acted upon by the governing body or the planning agency within such time limits as may be fixed in the subdivision and land development ordinance but the governing body or the planning agency shall render its decision and communicate it to the applicant not later then [sic] 90 days following the date of the regular meeting of the governing body or the planning agency (whichever first reviews the application) next following the date the application is filed, provided that should the said next

regular meeting occur more than 30 days following the filing of the application, the said 90-day period shall be measured from the 30th day following the day the application has been filed.

(1) The decision of the governing body or the planning agency shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address not later than 15 days following the decision.

(2) When the application is not approved in terms as filed the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite to the provisions of the statute or ordinance relied upon.

(3) Failure of the governing body or agency to render a decision and communicate to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of communication of the decision, in which case, failure to meet the extended time or change in manner of presentation of communication shall have like effect. ...

53 P.S. §10508 (Purdon's supp. pamphlet 1991) (footnote omitted).

The original Angino plan was submitted no earlier than October 26, 1990 (R. 9).[1] The minutes of November 12, 1990 state that the "plan was tabled at the request of the subdivider" (R. 11).[2] Assuming *arguendo,* that the statutory period began to run on November 12, 1990, it would have expired February

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[1] The parenthetical reference refers to item 9 of the certified record. Subsequent [sic] references follow a similar convention.

[2] The minutes of December 10, 1990 contain a similar notation (R. 13) as do the minutes of January 14, 1991 (R. 15).

10, 1991. However, on February 13, 1991 appellant Richard C. Angino sent a letter stating the following to the Secretary of the Planning Commission:

> Please accept this letter as my written request to postpone review of the Fishing Creek Acres' subdivision plan until the April, 1991 Planning Commission Meeting.
>
> I hereby waive the time limits required in your ordinance. Please let me know if you need further information.

Thus, even assuming the statutory period began to run in October of 1990, the approval was not automatically granted under the statute.

Moreover, making this assumption seems contrary to the record. The minutes of November 12, 1990 (R. 11), those of December 10, 1990 (R. 13), and those of January 14, 1991 (R. 15) all state that the plan's consideration was tabled at the request of the appellants.

A more credible factual analysis would lead to the conclusion that the plan (revised plan) was submitted (for purposes of the statute under consideration) no earlier than February 4, 1991 (R. 16), and was first considered on February 11, 1991 (R. 17). The previously quoted waiver is dated February 13, 1991 (R. 19). The plan was tabled at the request of the appellants at the March 11, 1991 meeting (R. 20). The plan received contingent approval on April 8, 1991 (R. 26); written notification of this contingent approval was sent to the appellants on April 19, 1991 (R. 29), within ninety days of its presentation.[3] The plan was again reviewed and rejected on May 6, 1991 (R. 31), and the Township Solicitor advised the appellants in writing of the reasons for the denial on May 15, 1991 (R. 32). Against this factual background we cannot say that the approval was automatically granted under the statute.

[3] Assuming we disregard the waiver (of which we actually take full regard).

The appellants also argue that the Board abused its discretion by not granting several variances or waivers to the appellants. Some of these arguments are couched in constitutional terms. Essentially, the appellants argue that the Board has failed to give its reasons for refusing the variances or waivers pursuant to the above-quoted section 10508. The appellants argue that the alleged failure to state the reasons for the denial of the variances or waivers resulted in the automatic approval provided for by section 10508.

As we have previously discussed the timing question, we limit our discussion of this point to the adequacy of the Township's letter of denial. We conclude that the letter, on its face, satisfies the statutory requirements. The statute states that "[w]hen the application is not approved ... the decision shall specify the defects found in the application and describe the requirements which have not been met and shall ... cite to the provisions of the statute or ordinance relied upon." 53 P.S. §10508(c)(2) (Purdon's supp. pamphlet 1991). The letter from the solicitor meets these requirements (R. 32). Our review of the cases cited by the appellants in their brief does not alter this conclusion.

For the foregoing reasons, we enter the following

ORDER

AND NOW, January 23, 1992, the decision of the defendant, the Board of Supervisors of Middle Paxton Township, is hereby affirmed.

BY THE COURT:
/s/Warren G. Morgan, P.J.

Distribution:

Richard C. Angino, Esquire, 4503 North Front Street, Hbg., PA 17110

Jeffrey A. Ernico, Esquire, Charles E. Zaleski, Esquire, 10 S. Market Square, Suite 500, P.O. Box 1265, Hbg., PA 17108

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SEPTEMBER 22, 1993

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

FIRST CLASS MAIL and HAND DELIVERY

Richard C. and Alice K. Angino
4503 North Front Street
Harrisburg, PA 17110

RE: Fishing Creek Acres

Dear Mr. and Mrs. Angino:

This office is Solicitor for Middle Paxton Township, Dauphin County, Pennsylvania, and has been authorized by the Board of Supervisors at its meeting on Tuesday, September 7, 1993 to write this letter conveying to you the reasons why your above Subdivision Plan and request for waivers were not approved by the Township at said Township meeting. The vote of the Board of Supervisors was 2 votes to 1 to disapprove the Plan and the requested waivers. While hardship factors are present in this case, a grant of the waiver requests poses significant public safety hazards and would be contrary to the public interest.

Your request for a waiver from the requirements of Section 501(i) was denied. Section 501(i) provides that cul-de-sac streets shall not exceed 500 feet in length. The Plan proposes a cul-de-sac length of 750 feet, which substantially exceeds the requirements of the ordinance. The length of a cul-de-sac is a means of controlling the amount of traffic that may be generated by abutting properties thereby allowing for better control of cluster development without getting too far away from the main travel way and to provide for safer access for emergency vehicles and other municipal services. As testified to at the hearing held on July 19, 1993, both Mr. Vandenburgh and Mr. Angino indicated that a parking lot (which appears to have a capacity of approximately 100 cars as was illustrated on your Preliminary Land Development Plan for your entire acreage which was reviewed by the Board at their August 2, 1993 meeting) and nursery to the northeast of the proposed subdivision is, and will be, served by the cul-de-sac street shown on the Fishing Creek Acres Plan. Consequently, in addition to the vehicular use for the five lots shown on the proposed Plan and the occasional truck and vehicular traffic, it appears that a substantial number of vehicles are using and will use the roadway in question for access to the said parking lot and nursery a number of times a year. Such vehicular use of the proposed roadway warrants strict conformity to the requirements of the Township's ordinance for the safety and protection of the public traversing Fishing Creek Valley Road and those utilizing the proposed street. Unless there is an alternative means of reducing potential traffic, particularly mixed commercial and residential use traffic, (and none was presented), there is no basis for allowing the waiver.

Your request for a waiver from the requirements of Section 501(g) of the Subdivision Ordinance relating to minimum curve radius is also denied. The curve radius proposed in the Plan is substantially in excess of ordinance requirements.

The curve radius is to protect the public health and safety by providing for the safe flow of traffic through a residentially or commercially developed area. It also allows for proper site distances. Larger commercial vehicles that will use the road in question are unable to negotiate the turn without encroachment into the oncoming lane of traffic. The mixture of truck traffic from the nursery, other traffic from other portions of developer's holdings, and the residential traffic from the proposed lots is only safe at the required minimum radius provided. The sharp curve radius at the bottom of the hill where steep slopes are present and immediately adjacent to the state highway results in an unsafe traffic flow condition based upon the anticipated mix of truck and automobile traffic.

Your request for a waiver from the requirements of Section 501(k)(1) relating to slope requirements is also denied. The steepness of the slopes along street "A" on the Plan substantially exceeds the requirements of the Ordinance. The standards for the slope of a bank are to provide a minimum area for vision and to reduce erosion and steep slopes adjacent to a paved road. Roadway embankment slope standards are designed to avoid the possibility of subsidence or sloughing of that road bank into the drainage ditch and also onto the roadway. Any deposit coming onto the roadway or the drainage areas from the steep slopes poses obvious safety hazards. The combination of mixed truck and automobile traffic, combined with steep grades and wooded vegetation, are grounds to deny the requested waiver because of a threat of public safety.

It should also be noted that at the regularly scheduled September 7, 1993 Board meeting, and prior to the Board's decision, the Board discussed with you the possibility of granting one or more of the waiver requests on the condition that street "A" would only be used for access to the proposed development and not be used as a means of access, either presently or in the future, to the parking area or for truck traffic

to i[illegible]nursery northeast of the proposed subdivision. However, since you indicated that you would not agree to such a condition being imposed, conditional approval of the waivers was not further considered by the Board.

A copy of this letter is also being provided to your surveyor for his information and attention.

Sincerely,
/s/JEFFREY A. ERNICO
Solicitor

/bjm

cc: J. Thomas VanWagner, Jr.
Secretary, Board of Supervisors
Middle Paxton Township
Bony R. Dawood
Rettew Associates

MIDDLE PAXTON TOWNSHIP
PLANNING COMMISSION MEETING
June 8, 1987

The June 8, 1987 Planning Commission Meeting was called to order at 7:30 P.M. by Chairman Daniel Rogers. Also present were the following Planning Commission members: Mark Mumma, Donald Wilhelm, Paul Schock, Jeffrey Knosp and Ralph Stone.

The minutes of the May 11, 1987 meeting were read and unanimously approved. Motion Mumma, seconded Wilhelm.

The Deaven-Schock subdivision plan was motioned for approval by Stone contingent on monuments and notorizing of signatures. The motion was withdrawn for lack of second. A motion was made by Mumma to extend the contingencies to include items 1, 2, 3, 4 and 9 of the Dauphin County P/C comments. The motion was seconded by Wilhelm, the vote was unanimous with Mr. Schock abstaining.

County Conservation's site plan for the new agricultural building located along Rt. 225 was approved contingent on compliance with the township engineer's comments. Motion Mumma, seconded Knosp. Vote unanimous.

The Free Church's land development plan for the Fox Lane area represented by Attorney Greg Reed was rejected. The reasons were the need for a more clear, concise plan detailing among other items location of buildings, setbacks and slope of access road. Proof of a state highway occupancy permit is needed, along with a road maintenance agreement for the access road. Motion Mumma, seconded Wilhelm, vote unanimous.

The Angino sketch plan submitted by Rettew Assc., was represented by Keith Poffenberger. Several potential prob-

lems were pointed out, among which are the slope of the access road, its width crossing lot #2 and the possible need of a variance on cul de sac length.

Custer's sketch plan for the Givler tract in Fishing Creek Valley was reviewed. Views were given by the Commission on various topics brought forth by the Custers.

MIDDLE PAXTON TOWNSHIP
PLANNING COMMISSION MEETING
April 8, 1991

The April 8, 1991 meeting of the Middle Paxton Township Planning Commission was called to order at 7:30 P.M. by Chairman Mark Mumma. Also present were the following Planning Commission members: Ralph Stone, Lloyd Howard and Albert Smith.

The first plan on the agenda was the land development plan of Landscape II. There is at present a dispute as to the exact location of wetlands on the property. If needed the plan will be amended. The plan is for a recreation area to be located along Rt. 22/322. It was approved contingent on DER approval of the sewage module. Motion Smith, seconded Stone, vote unanimous.

The Fishing Creek Acres S/D on property owned by Richard and Alice Angino was approved contingent upon the following items:

1. The length of the roadway/cul-de-sac exceeds 500 feet. Para. 501 i. A waiver is requested item 16 general note—recommends approval of request.

2. Fill slope of 2 to 1 exceeds requirement. Para 501 k 1. The typical section on page 2 indicates slopes that do not agree with page 3—note, if cannot meet 1 to 1 he has to come back with cross section or add a retainer wall or combination.

3. Curve C-4 does not meet the requirements. Para 501 g. A waiver is requested item 15 general notes—recommends approval of request.

4. Lot No. 4 has been omitted from the area summary.

5. Add a note for lots 1A and 5A that these lots are not to be used as individual lots—no construction in add on areas.

6. The seepage trench design shown on page 23 of the Storm Water Management Narrative should be detailed on the drawings.

7. An easement is shown on lot No. 2 for access to lot No. 1. This easement must be defined by metes and bounds—move monument.

8. The utility lines for lot No. 1 cross Lot 5A with a guy pole shown on the edge of the paving. Will the deep cut shown on sheet 2 effect [sic] these poles—note needed saying what changes will be.

9. The typical cross section should reflect the actual conditions as it pertains to the cut section.

10. Note added indicating that steep slope areas will not be disturbed.

Motion Smith, seconded Stone, vote unanimous.

The revised Heller-Adams S/D plan for property located north of MdKelvey [sic] Rd. was approved contingent on completion of the following items:

1. The inlets should be moved towards McKelvey Road so that the difference in elevation allows the discharge pipe to discharge in the surface.

2. The combination inlet and concrete box should be constructed to minimize the amount of sediment entering the system.

3. The swales along the private drive should have stone dikes to reduce scouring.

Motion Stone, seconded Smith, vote unanimous.

A sketch plan for further S/D of the Morret property in F/C Valley was reviewed. Concern was expressed about the length of the cul-de-sac street and width and condition of the access R/W. The plan will be reviewed again at the May P/C meeting with additional information supplied by the S/D.

The Mumma S/D plan was approved contingent on favorable Light-Heigel and D/C reviews. Motion Stone, seconded Howard, Mumma abstained, Howard voted yes.

There being no further business the meeting was adjourned at 9:45 P.M. Motion Howard, seconded Stone.

/s/J. Thomas Van Wagner
Secretary-Supervisor

DAUPHIN COUNTY CONSERVATION DISTRICT

May 24, 1991

Mr. J. Thomas Van Wagner
Middle Paxton Township Municipal Building
P.O. Box 277
Dauphin, PA 17018

RE: FISHING CREEK ACRES
#20-91-02
MIDDLE PAXTON TOWNSHIP

Dear Tom:

The Dauphin County Conservation District has completed a review of the revised erosion and sedimentation control plan for the above referenced project. Subject to the comments on the attached page, the plan as submitted is adequate to comply with the requirements of Chapter 102 of Administrative Code Title 25—the Department of Environmental Resources Rules and Regulations Pertaining To Erosion Control.

The Conservation District has reviewed this plan solely to determine whether it is adequate to satisfy the requirements of Chapter 102 as referenced above. By a determination that the plan is adequate to meet those requirements, neither the Conservation District nor the County of Dauphin assumes any responsibility for the implementation of the plan or the proper construction and operation of the facilities contained in the plan. The design, structural integrity, and installation of the control measures are the responsibility of the landowner and/or the earthmover.

Your cooperation in the review and implementation of this plan is appreciated. Please contact our office if you have any questions concerning your erosion and sedimentation control plan.

Sincerely,
/s/Michael G. Hubler
Resource Conservationist

MGH/tlz

cc: File
Richard & Alice Angino
Rettew Associates—ATTN: Bony R. Dawood
C. Ken Vandenburgh

HETRICK, ZALESKI, ERNICO & PIERCE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
10 SOUTH MARKET SQUARE, SUITE 500
HARRISBURG, PENNSYLVANIA 17101-2001
POST OFFICE BOX 1265
HARRISBURG, PENNSYLVANIA 17108-1265

May 15, 1991

Mr. and Mrs. Richard C. Angino
4503 North Front Street
Harrisburg, PA 17110

Re: Fishing Creek Acres Subdivision

Dear Mr. and Mrs. Angino:

This office is Solicitor for Middle Paxton Township, Dauphin County, Pennsylvania, and has been authorized by the Board of Supervisors of the Township at its meeting on May 6, 1991, to write this letter conveying to you the reasons why your above Subdivision Plan was not approved by the Township at the said Township meeting. The vote of the Board of Supervisors were two votes to disapprove the Plan with Mr. Wilhelm abstaining.

Please note that the request for a variance regarding the length of the cul-de-sac was also denied by the Supervisors as a part of the action taken by the Supervisors at the meeting.

The reasons why the Plan has been denied include violation of Section 501g. with respect to curve C-4 which does not meet the minimum radius of the center line for the curve as provided in the Ordinance; violation of Section 501i. addressing the length of the cul-de-sac street which is substantially in excess of the requirements of the Ordinance; and violation of Section 501k.1. which addresses the slope of banks along

streets, which requirements are substantially exceeded by the banks along street "A" on the Plan.

We would also note that the Board of Supervisors did not agree to grant you a variance with regard to the slope requirements of Section 501k. of the Ordinance.

A copy of this letter is also being provided to your surveyor for his information and attention.

Sincerely,
/s/Jeffrey A. Ernico
Solicitor

/ldw

Certified No. P 701 301 567
Return Receipt Requested

cc: J. Thomas VanWagner, Secretary
Board of Supervisors of Middle Paxton Township

Rettew Associates, Inc.

MIDDLE PAXTON TOWNSHIP
BOARD OF SUPERVISORS MEETING
May 6, 1991

The regular meeting of the Board of Supervisors of Middle Paxton Township was called to order at 7:30 P.M. in the township building by Chairman Richard Peffer. Also present were Donald Wilhelm, Supervisor, J. Thomas Van Wagner, Secretary-Treasurer, Supervisor, Jeffrey Ernico, Solicitor, Mary Jane Davis, Zoning Officer and Harold Light, Township Engineer.

Following recitation of the Pledge of Allegiance to the flag, the minutes of the April 1, 1991 meeting were approved. Motion Wilhelm, seconded Van Wagner, Peffer concurred.

The Treasurer's report was approved for audit. Motion Wilhelm, seconded Van Wagner, Peffer concurred.

A discussion was held concerning commencing a voluntary recycling program in the township. A workshop meeting was held on this matter on April 29, 1991. This meeting was attended by approximately 45 persons. A strong desire to begin a program was expressed by those in attendance at the workshop. Liz LaPlante and Chris Kraft volunteer to co-chair a recycling committee. The Board of Supervisors decided to begin a program with the following parameters:

1. Recycle aluminum cans, glass, plastics and newspapers. Newspapers would be on an irregular basis unless a steady market is found.

2. Bins would be constructed by township personnel to sort materials which then would be trucked and sold by the township. Money would be split with volunteer groups such as scouts, which manned the recycling center, if possible, after expenses are paid.

3. Center would be open perhaps one Saturday per month.

4. Grants would be applied for to pay start-up costs.

5. Targeted start up date July 13, 1991.

Motion Van Wagner, seconded Wilhelm, Peffer concurred.

The Lake Edwinona agreement involving Mr. and Mrs. Lesh was signed.

A proposed timbering operation along Blue Mountain Parkway to be managed by Penn Forestry Company was discussed. Blue Mountain Parkway is posted with weight limit signs. It was decided that an agreement would be needed along with a bond in the amount of $10,000. No work could be done during March, April or during times of excessive rainfall. Motion Van Wagner, seconded Wilhelm, Peffer concurred.

A letter of notification received from Getty Oil Co. with a station located just west of Dauphin Borough was discussed. The letter indicated a plan whereby treated water from a fuel tank spill would be conveyed under Rt. 22/322 to the river. The township will notify affected property owners of the plan. Mr. Ernico will obtain further information from DER concerning the permitting process. He will also indicate the township's concern to DER.

A request by Cenn Penn Stores, owners of Robinson's Market, to place curbing along the edge of Briardale Rd. at the store location was tabled. The curbing request was made to prevent drivers from cutting through the store's parking lot potentially endangering shoppers and employees. The Board will review the site and verify the R/W of Briardale Rd. at the store.

The Fishing Creek Acres subdivision plan was reviewed. It was decided to reject the plan for the following reasons:

1. Curve C-4 does not meet the minimum radius of the center line for the curve—Sec. 501 g.

2. Cul-de-sac street too long—Sec. 501 i.

3. Sec. 501 k 1—slope of banks along streets violated by Street A in some sections.

4. No DER sewage module approval—Sec. 405 p 7 & 403 b 6.

Motion Peffer, seconded Van Wagner, Wilhelm abstained.

The Landscape II land development plan for a recreation area to be located along RT. 22/322 was contingently approved. The two contingent items which need to be completed are as follows:

1. DER approval of sewage module—Sec. 405 p 7 & 403 b 6.

2. Intermunicipal agreement with Dauphin Borough indicating that if the township should have public sewer of its own in the future, Landscape II would return to the township as a customer with no strings attached.

Motion Wilhelm, seconded Van Wagner, Peffer concurred.

The revised Heller-Adams S/D plan for property located along McKelvey Rd. was approved contingent upon completion of the following items:

1. Light Heigel items #1, 2 and 3—letter dated 4/8/91.

2. DER approval of the sewage module.

3. County Conservation approval of the E&S plan.

4. Completion of an improvement and a maintenance agreement.

Motion Van Wagner, seconded Wilhelm, Peffer concurred.

Mark Mumma's S/D plan for property located near Colver Blvd. was approved contingent upon DER approval of the sewage module and the subdivider and successors becoming a party to the existing mainentance agreement. Motion Van Wagner, seconded Wilhelm, Peffer concurred.

Herbert Greider's S/D plan was tabled if a time extension for plan action is granted. If no time extension is granted the plan is rejected for the following reasons:

1. No evidence of DER approval of the sewage module—Sec. 405 p 7 and 403 b 6.

2. No evidence of County Conservation approval of the E&S plan—Sec. 405 p 4.

3. Plan notes unreadable.

4. Plan not represented.

5. Possible access concerns.

Motion Van Wagner, seconded Wilhelm, Peffer concurred.

Bills received since the last meeting were approved for payment. Motion Wilhelm, seconded Peffer, Van Wagner concurred.

Mrs. Davis, the Zoning Officer, reported on a situation involving John Lebo. Mr. Lebo was granted approval by the Zoning Hearing Board to place two apartments in a building he owns south of Rt. 22/322. He was also granted approval for a third apartment contingent on septic approval. It has been discovered that the septic may not be large enough for even two apartments. Therefore, the matter will be turned over to the SEO for investigation. A letter will be sent stopping any further construction of a third unit until the situation involving the septic is resolved.

A motion was made confirming the filing of a petition for review in the Stoney Creek Manor case and the filing for a continuance in the general septic appeals case. Motion Van Wagner, seconded Wilhelm, Peffer concurred.

An agreement will be reached with the Humane Society whereby the society will bill the township up to $600 for services per year. They will continue service after the billing ceiling is reached and will bill us only for the actual services rendered if the township does not reach the ceiling.

The Keller S/D plan for property located near Huckleberry Lane was rejected for the following reasons:

1. Proper R/W not provided—Sec. 501.

2. Primary control point not designated—Sec. 405 a.

3. Two permanent (concrete) monuments required per lot—Sec. 405 h.

4. E&S plan required—Sec. 405 p 4.

5. Final plan must meet size requirements—Sec. 405.

6. DER approval of the sewage module—Sec. 405 p 7.

Motion Van Wagner, seconded Wilhelm, Peffer concurred.

There being no further business the meeting was adjourned at 10:30 P.M. Motion Peffer, seconded Wilhelm, Van Wagner concurred.

/s/J. Thomas Van Wagner
Secretary

SUBDIVISION AND LAND DEVELOPEMENT [sic] ORDINANCE FOR MIDDLE PAXTON TOWNSHIP

ADOPTED: February 26, 1979
AMENDED: January 31, 1980
AMENDED: December 5, 1983
AMENDED: February 5, 1990

ORDINANCE NO.

AN ORDINANCE

An Ordinance regulating Subdivision of Land and Land Development within the Township of Middle Paxton, Dauphin County, Pennsylvania, providing for the preparation of preliminary and final plans for such purpose; requiring certain improvements to be made or guaranteed to be made by the subdivider; regulating sale of lots, erection of buildings, laying out, construction, opening and dedication of streets, sewers, other facilities, and public improvements in connection with subdivision, and prescribing penalties for the violation thereof.

The Township Supervisors of the Township of Middle Paxton, Dauphin County, Pennsylvania, pursuant to Municipalities Planning Code of 1968 as amended (Act No. 247, Article V, Section 501 through Section 515) enact and ordain:

ARTICLE I

SHORT TITLE

SECTION 101. SHORT TITLE

These regulations shall be known and may be cited as "The Township of Middle Paxton Subdivision and Land Development Ordinance."

ARTICLE II
PURPOSE, AUTHORITY, APPLICATION AND INTERPRETATION

SECTION 201. PURPOSE OF THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE

The purpose of this subdivision and land development ordinance is to provide for harmonious development of the municipality and county by:

a. Ensuring the orderly and efficient integration of subdivisions into the development of the Township of Middle Paxton.

b. Ensuring sites suitable for building and human habitation.

c. Ensuring conformance of subdivision plans with public improvement plans.

d. Ensuring coordination of inter-municipal public improvement plans and programs.

e. Ensuring the protection of water resources and drainageways.

f. Ensuring the efficient movement of traffic.

g. Ensuring equitable handling of all subdivision plans by providing uniform standards and procedures.

h. Ensuring the greater health, safety and welfare of the citizens of the Township of Middle Paxton.

i. Ensuring the efficient and orderly extension of community services and facilities at minimum cost and maximum convenience.

SECTION 202. AUTHORITY

The Governing Body shall have the authority to approve for the Township all Pre-Application Plans and Data, Preliminary and Final Plans as required herein.

The Commission is designated as the agency which shall review and make recommendations on all pre-application plans and data, preliminary plans and final plans as required herein, prior to action on same by the Governing Body.

SECTION 203. CITIES, BOROUGHS AND TOWNSHIPS WITH SUBDIVISION AND LAND DEVELOPMENT ORDINANCES

The Township having adopted this subdivision and land development ordinance is exempted from county regulations, except as may be provided by law. If required by law, the Township shall not approve any applications for review of subdivision and land development within the Township until any review and report which may be required by law has been requested by the Township and any statutory time periods have expired.

SECTION 204. APPLICATION OF REGULATIONS

a. No subdivision or land development of any lot, tract or parcel of land located in the Township of Middle Paxton shall be effected; no street, sanitary sewer, storm sewer, water main, public utilities, or other facilities in connection therewith shall be laid out, constructed, opened or dedicated for public use or travel, or for the common use of occupants of buildings thereon unless and until a final subdivision plan has been approved by the Governing Body and publicly recorded in the manner prescribed herein; nor otherwise except in strict accordance with the provisions of this ordinance.

b. No lot in a subdivision may be sold; no permit to erect or alter any building upon land in a subdivision or land development may be issued; and no building may be erected or altered in a subdivision or land development, unless and until a final subdivision plan has been approved by the Governing Body and in connection therewith has been guaranteed in the manner prescribed herein.

c. Unit or condominium subdivision of real property is included within the meaning of the subdivision as defined herein and must comply with the subdivision regulations. Such compliance shall include, but not be limited to, the filing of preliminary and final plans, the dedication and improvement of right-of-way, roads, streets and the payment of fees and charges as established by the governing body.

d. Preliminary and final plans shall indicate the location of each structure and clearly define each unit and shall indicate public easements, common areas and improvements, all easements appurtenant to each unit and improvements to public right-of-way.

e. All subdivisions are subject to the Zoning regulations as they apply to use and density requirements, setbacks, parking and other features which shall be indicated on the subdivision plans.

SECTION 205. INTERPRETATION

In interpreting and applying the provisions of this Ordinance, such provisions shall be held to be minimum requirements for the promotion of public health, safety, comfort, convenience and general welfare. Where provisions of this Ordinance impose greater restrictions than those of any statute, other ordinance, restriction or regulation, the provisions of this Ordinance shall be controlling. Where the provisions of a statute, other ordinance, resolution or regulation impose greater restrictions than this Ordinance, the provisions of such statute, resolution, ordinance or regulation shall be controlling.

• • •

ARTICLE V

DESIGN STANDARDS

SECTION 501. STREETS:

General Standards

The arrangement, character, extent, width, grade and location of all streets shall conform to the Official Map and to

be Townships Comprehensive Plan, if one has been adopted, and shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and in the appropriate relation to the proposed uses of the land to be served by such streets. Where not shown on the Official Map or Township Comprehensive Plan, the arrangement and other design standards of streets shall conform to the provisions found herein.

1. The arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas.

2. Where adjoining areas are not subdivided, the arrangement of streets in new subdivisions shall make provision for the proper projection of streets to the boundaries of the tract to be subdivided.

Intersections

Intersections involving the junction of more than two (2) streets prohibited. Right-angle intersections must be used wherever possible; however, in no case shall streets intersect at less than seventy-five (75) degrees in angle.

Intersection Curve Radii

At intersections of streets, the radius of the curb or edge of pavement shall not be less than the following:

Intersection	Minimum Simple Curve Radii of Curb or Edge of Pavement
Collector with Collector Street	Thirty-five (35) feet
Collector with Minor Street	Twenty-five feet
Minor Street with Minor Street	Fifteen (15) feet

Rounded corner or diagonal cutoffs must be provided on the property lines substantially concentric with or parallel to the chord of the curb radius corners.

Intersection Sight Distance

Proper sight lines must be maintained at all street intersections. Measured along the center line, there must be a clear triangle of seventy-five (75) feet (150 feet for Arterial Streets) from the point of Intersection, and no building or obstruction higher than thirty (30) inches above the grade of the center line of the streets shall be permitted in this area.

Streets Not in Alignment

If streets are not in alignment, the distance between the center lines of streets opening on opposite sides of an existing or proposed street shall be no less than one hundred twenty-five (125) feet.

Sight Distance

Sight distance must be provided with respect to both horizontal and vertical alignment. Measured along the center line, four (4) feet above grade, this distance must be as follows:

Type of Street	Minimum Distance
Collector—public	200 feet
Minor—public	100 feet
Private Street or Easement	100 feet

Curves

Where connecting street lines deflect from each other at any one point by more than 10 degrees, the line must be connected with a true, circular curve.

The minimum radius of the center line for the curve must be as follows:

Type of Street	Minimum Distance
Collector—public	300 feet
Minor—public	150 feet
Private St. or easement	150 feet

Straight portions of the street must be tangent to the beginning or end of curves. Except for minor streets there must be a tangent of at least 100 feet between reverse curves.

Street Widths

1. Minimum Street right of way and cartway widths shall be as follows:

PUBLIC STREET

Street Type	Width
Arterial Streets	As determined by
Right of Way	Commission after
Cartway	consultation with Township Supervisors and Pennsylvania Department of Transportation
Collector Streets	
Right of way	50 feet
Cartway	30 feet or 36 feet with vertical curbs
Berm (Shoulder)	4 feet on each side
Minor Streets	
Right of way	50 feet
Cartway	22 feet
Alternate	30 feet w/ vertical curbs
Berm (Shoulder)	4 feet on each side
Turn Around or Cul-de-Sac (diameter)	
Right of way	100 feet
Cartway	80 feet
Marginal Access	
Right of Way	50 feet
Cartway	26 feet or 30 feet w/vertical curbs
Berm (shoulder)	4 feet on each side

PRIVATE STREET

Street Type	Width
4-10 Lots	
Right of way	50 feet
Cartway	18 feet
Berm (shoulders	2 feet
3 or less lots	
Right of way	50 feet
Cartway	12 feet
Berm (shoulders)	2 feet

2. Provision for additional street width (right of way, cartway or both) may be required when determined to be necessary by the Township Supervisors on the recommendation of the Commission in specific cases for:

a. Public safety and convenience.

b. Parking in commercial and industrial areas and in areas of high density development.

c. Widening of existing streets where the width does not meet the requirements of the preceding paragraphs.

3. In certain circumstances approved by the governing body, upon application made by the applicant, a private street or driveway providing access to 3 or less dwelling units may be considered for the following special specifications upon the condition that a satisfactory maintenance agreement for the roadway in question shall be in effect and binding upon all lots served by the private street or driveway. Such accesses are generally discouraged by this ordinance and will only be accepted under circumstances where the municipality does not desire to accept a proposed driveway access easement as a public street or under circumstances where the municipality believes a public street may be unnecessary. The total number of lots served or dwelling units served by said street or drive-

way shall be defined to include all existing and/or proposed lots and dwellings utilizing the private street or driveway for access. The private street or driveway access easement shall be designed to provide a driveway to accommodate the type and volume of traffic anticipated to be generated and shall be constructed to provide a sound, all-weather driving surface, reasonable smooth and free from mud, dust, or standing water. The private street or driveway maintenance agreement shall be in the form approved by the Township listing all the provisions listed in Appendix A attached hereto, and all affected parties abutting and adjoining said easement shall be bound by said agreement which shall create a private right of way which shall be a covenant running with the land. This provision shall not apply to a street or driveway serving greater than three (3) dwelling units. For purposes of this section the term private driveway access easement means the right to use land of another for purposes of ingress and egress to the land of the holder of said right to the exclusion of the general/public and intended for vehicular access to said land.

[ ]. Cul-de-Sacs or Dear [sic] end Streets

Cul de Sacs or dead end streets (herein referred to as "cul de sacs"), designed to be so permanently, shall not exceed five hundred (500) feet in length and shall be provided with a turn around having minimum dimensions for right of way and cartway widths as indicated in the preceding section, except in non-residential areas where cul de sacs may exceed five hundred (500) feet in length, when under special circumstances, the governing Body on the recommendation action of the Commission deems such additional length necessary. The total combined length of any cul de sac or combination of cul de sacs shall not be

...

4. In the event that the municipality and applicant cannot agree upon the professional engineer to be appointed within 20 days of the billing date, then, upon application of either party, the President judge of the Court of Common Pleas of their judicial district in which the municipality is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such engineer, who, in that case, shall be neither the municipal engineer nor any professional engineer who has been retained by, or performed services for. the municipality or the applicant within the preceding five years.

5. The fee of the appointed professional engineer form [sic] determining the reasonable and necessary expenses shall be paid by the applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is equal to or greater than the original bill. [If the amount of payment required in the decision is equal to or greater than the original bill] If the amount of payment required in the decision is less than the original bill by $1,000 or more, the municipality shall pay the fee of the professional engineer, but otherwise the municipality and the applicant shall each pay one-half of the fee of the appointed professional engineer.

SECTION 903.

No final plan shall be approved unless all fees and charges are paid in full.

ARTICLE X

ALTERATION OF REQUIREMENTS

SECTION 1001.

Where, owing [sic] the special conditions, a literal enforcement of the provisions of these regulations will result in unnecessary hardship, the Township Board of Supervisors, on

the recommendation of the Commission, may make such reasonable alteration thereto as will not be contrary to the public interest and so that the spirit of these regulations shall be observed and substantial justice done.

Moreover, the Board of Supervisors may waive any of the requirements of this Ordinance if it determines that certain details or specifications are not necessary to be shown on a plan in order to insure that the Plan conforms with the standards of good planning and engineering and will not have a deleterious effect on neighboring property.

SECTION 1002.

Applications for any alteration of requirements shall be submitted in writing by the applicant at the time the Preliminary Plan is filed with the Commission. The application shall state fully the grounds and all facts relied upon by the applicant.

SECTION 1003.

In granting any alteration of requirements, the Township Board of Supervisors shall record its action and the grounds for granting any variance to the applicant applying for the alteration.

SECTION 1004.

Whenever a request for the alteration of requirements is denied, the Township Board of Supervisors shall record its action and the grounds for such denial in its minutes. The township Board of supervisors action and the grounds for such denial shall be provided in writing to the applicant.

ARTICLE XI

ENFORCEMENT, PENALTIES, SEVERABILITY AMENDMENTS AND ENACTMENT

SECTION 1101. ADMINISTRATION AND ENFORCEMENT

A. The Commission and Governing Body shall have the duty and authority for the administration and general enforcement of the provisions of this ordinance, as specified or implied herein. Officials of the Township of Middle Paxton having regulatory duties and authorities connected with the appurtinent [sic] to the subdivision, use or development of land shall have the duties and authorities for controlling enforcement of the provisions of this Ordinance, as specified or implied herein or in other Ordinances of the Township of Middle Paxton.

b. Permits required by the Township of Middle Paxton for the erection or alteration of buildings, the installation of sewers or sewage disposal systems, or for other appurtinent [sic] improvements to, or use of, the land shall not be issued by any township of Middle Paxton official responsible for such issuance until he has ascertained that the site for such building, alteration, improvement of use conforms to the site description as indicated by the approved and recorded Final Plan or other land description acceptable in accordance with the provisions of this Ordinance, and that it is in compliance with all applicable provisions of this Ordinance.

c. The Board of Supervisors shall require that applications for Sewage Disposal Permits contain all the information for it to ascertain that the site for the proposed system is acceptable in accordance with the provisions of this ordinance, the Rules and Regulations of the Department of Environmental Resources and any requirements of the Township of Middle Paxton pertaining to the issuance of such permit.

MEMORANDUM

TO: Harold J. Light, P.E., P.L.S.

FROM: Dan Bode, M.R.Pl.

DATE: April 19, 1993

SUBJECT: Cul-De-Sac Lengths vs Private Roads

Research of two dozen ordinances covering a five county region indicates that cul-de-sac lengths vary from 500 feet to over 1000 feet. Reed Township in Dauphin County permits 1500 feet and may serve up to 50 dwellings (the most liberal of the ordinances sampled).

Jackson Township in Lebanon County allows a maximum length of 600 feet to serve a maximum of 12 dwellings (about average).

Cul-de-sacs should not be confused with long private access roads which are common in rural municipalities. The desire for a secluded home in the woods often necessitates lengthy private drives which frequently are used by more than one family.

During the subdivision review process, the Township may wish to require that a statement be added to the plan which relieves the Township of responsibility for maintenance of private driveways and access roads. Such a statement should include a cautionary statement concerning the potential for restricted/delayed access by emergency vehicles in the event of road closure due to adverse weather conditions.

The attached memorandum is a compilation of the ordinances reviewed on behalf of the Township.

Should you have any further needs relative to the above, please contact me.

/s/Dan Bode

MEMORANDUM

TO: Dan Bode

FROM: Jennifer

RE: Cul-de-Sac Lengths

DATE: April 2, 1993

I researched the maximum permitted cul-de-sac lengths from 24 ordinances. The average length is 650'. Approximately 46% of the ordinances had a maximum cul-de-sac length of 600'. 29% had a max. length of 500', 17% had a max. length of 1000' or greater, and 8% had a max. length of 800'. The most widely used max. length was in the range of 500 to 600' which comprised 75% of the ordinances.

DAUPHIN COUNTY

South Hanover Twp. 600'

Gratz Boro 500'

Londonderry Twp. 600' (to serve no greater than 20 dwellings) 750' (if right-of-way is increased to 60' and cartway to 50')

Washington Twp. 1000'

Conewago Twp. 500' (to serve no more than 15 dwellings—normally prohibited unless unique physical circumstances are proved to Board)

Reed Twp. 1500' (to serve no more than 50 dwellings)

Halifax Twp. 500'

LEBANON COUNTY

Annville Twp. 600'

Cornwall Boro 600'

South Lebanon Twp. 1000' (to serve no more than 20 dwellings)

North Lebanon Twp. min. 250' max. 600'

South Londonderry Twp. 1000'

Lebanon County Ordinance 600' (to serve no more than 12 dwellings)

Jackson Twp. 600'

LANCASTER COUNTY

Manheim Twp. 800'

Colombia [sic] Boro
min. 300' max. 600'

West Hempfield Twp.
min. 250' max. 600' (no more that [sic] 250 vehicle trips per day)

Mount Joy Twp.
min. 210' max. 600'

YORK COUNTY

Springettsbury Twp. 600'

Manchester Twp. 500'

Conewago Twp. 500'

Fairview Twp. 800' (to serve no more than 16 dwellings)

BERKS COUNTY

North Heidelberg Twp. 500' (to serve no more than 20 dwellings)

Bethel Twp. 500' (to serve no more than 20 dwellings)

...

LIGHT-HEIGLE & ASSOCIATES, INC.
ENGINEERS & SURVEYORS

FOR ANGINO FISHING CREEK ACRES
S/D

TO: Harold J. Light, P.E., P.L.S.

FROM: Daniel Bode, M.R.P.I.

DATE: March 8, 1993

SUBJECT: Street and Highway Design Standard Rationale Relative to Middle Paxton Township

I have examined the subject criteria and compared it to similar standards set by other municipalities and counties. Additionally, I have researched documents generated by the American Association of State Highway Officials (AASHO) pertinent to design controls and criteria (1). I offer the following comments for your information. All terms used herein shall have the meaning as defined in the Middle Paxton Township Subdivision and Land Development Ordinance (SLDO).

The Township requires that the minimum radius of the center line for a curve be 300 feet for a *Collector Street* and 150 feet for a *Minor Street.*

These lengths are directly proportional to the maximum safe speed to be posted and may be equated to 30-35 MPH and 20-25 MPH respectively. These design controls and criteria were developed by AASHO in the 1950's and are based on such universal physical properties as gravity, centrifugal and centripetal force. They are minimum standards and embody a safety factor for conditions of reduced traction and the driver who exceeds the posted limit. (Please refer to Table III - 5 of AASHO hereto attached)

Design criteria for street width is largely dictated by PA DOT in Publication 70. If a street is to be offered for public dedication it must meet the minimum criteria specified in this publication if the municipality is to receive Liquid Fuels Payments.(2) The ordinances that I am familiar with all assume that a street within a housing development will be offered for dedication.

Street grades, banked curves, and curbing are regulated to prevent the creation of storm water problems and control storm water drainage. Compared with recently adopted storm water ordinances in Lancaster and Lebanon Counties, Middle Paxton's SLDO could be classified as adequate but minimum.

Cul-de-sac or Dead End Streets are not regulated by PA DOT, AASHO, or any agency that I am aware of. However, common sense generally prevails in regulating length, width, and radius of turn-around space. Primary design concerns are access and maneuverability not only for residential traffic but for emergency, commercial, and maintenance traffic as well. Provisions for school buses and handicap-equipped vehicles must also be made. Egress and ingress verses [sic] the number of residents who must use this type of a minor street are considered in determining the maximum length. Middle Paxton Township permits lengths greater than 500' if necessary upon the recommendation of the Planning Commission. This is a common and reasonable restriction.

Notes

(1) A Policy on Geometric Design of Rural Highways, American Association of State Highway Officials. PP 70-80 and 155-160.

(2) Conversation with Mr Terry Goodling, PA DOT Municipal Liaison (787-4839).

/s/D.B.

AASHO—GEOMETRIC HIGHWAY DESIGN

TABLE III-5

MAXIMUM DEGREE OF CURVE AND MINIMUM RADIUS DETERMINED FOR LIMITING VALUES OF e AND f

Design speed	Maximum e	Maximum f	Total (e+f)	Minimum radius	Max. degree of curve	Max. degree of curve, rounded
30	.06	.16	.22	273	21.0	21.0
40	.06	.15	.21	508	11.3	11.5
50	.06	.14	.20	833	6.9	7.0
60	.06	.13	.19	1263	4.5	4.5
65	.06	.13	.19	1483	3.9	4.0
70	.06	.12	.18	1815	3.2	3.0
75	.06	.11	.17	2206	2.6	2.5
80	.06	.11	.17	2510	2.3	25.
30	.08	.16	.24	250	22.9	23.0
40	.08	.15	.23	464	12.4	12.5
50	.08	.14	.22	758	7.6	7.5
60	.08	.13	.21	1143	5.0	5.0
65	.08	.13	.21	1341	4.3	4.5
70	.08	.12	.20	1633	3.5	3.5
75	.08	.11	.19	1974	2.9	3.0
80	.08	.11	.19	2246	2.5	2.5
30	.10	.16	.26	231	24.8	25.0
40	.10	.15	.25	427	13.4	13.5
50	.10	.14	.24	694	8.3	8.5
60	.10	.13	.23	1043	5.5	5.5
65	.10	.13	.23	1225	4.7	4.5
70	.10	.12	.22	1485	3.9	4.0
75	.10	.11	.21	1786	3.2	3.0
80	.10	.11	.21	2032	2.8	3.0
30	.12	.16	.28	214	26.7	26.5
40	.12	.15	.27	395	14.5	14.5
50	.12	.14	.26	641	8.9	9.0
60	.12	.13	.25	960	6.0	6.0
65	.12	.13	.25	1127	5.1	5.0
70	.12	.12	.24	1361	4.2	4.0
75	.12	.11	.23	1630	3.5	3.5
80	.12	.11	.23	1855	3.1	3.0

Editor's Note: Used by PA DOT; Reflected in SDLO Requirements.

and the resulting relations are demonstrated in figure III-6:

Appendix

1. Superelevation rate is directly proportional to the degree of curve, i.e., a straight line relation between D = O and D = maximum.

2. Superelevation rate is such that a vehicle traveling at design speed has all centrifugal force counteracted by superelevation on curves up to that requiring the maximum e, and maximum e provided on all sharper curves.

3. Same as method 2 except based on average running speed.

4. Superelevation rate is in a curvilinear relation with degree of curve, with values between those of methods 1 and 2.

[Testimony of Richard Angino at July 19, 1993 Hearing of Board of Supervisors]

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was improve the area and improve an existing situation that's still there and bad, and we're here to talk about that.

MR. VAN WAGNER: I have a question concerning the proposed access road to this subdivision between Mr. Vandenburgh and Mr. Angino, I think — I don't know if you were testifying, Mr. Angino, but you had indicated that additional traffic would be using that road. Had the subdivision been approved, additional traffic would be using that?

MR. ANGINO: No additional traffic, just the traffic that has always used it. This road, ever since it was built, the truck and things that go to the nursery have used that road. So it wouldn't be adding any traffic. The only traffic that we were envisioning in this was for these four houses and the four lots that we were proposing there.

But I think in answer to a question, whether once we had a cul-de-sac there whether we would stop what was there before, which was the trucks, from going up into my nursery, and I said I wouldn't agree to that because that's a situation there, my driveway is my personal driveway and it's too narrow to accommodate tractor-trailers and things to come up in there and make turns to go to the nursery.

•••

MR. ZALESKI: No objection.

BY MR. ANGINO:

I'm testifying as the owner or one of the owners of the land and the holder of certain interest in a corporation called

King Drive Corporation, which has been created in order to develop land in this area. The long-term goals that started back in 1971 were to have a private residence there and to sell off certain land around the place in order to make money to pay for obviously the cost of the land and the development.

From the beginning, we were thinking of developing anywhere from five to seven lots along Fishing Creek Valley Road. We had actually been to the Planning Commission one time attempting to get apartments and quickly got knocked down on that concept of obtaining any kind of development that would involve the use of apartments there or condominiums or anything along that line.

So the best that we thought we could to was to go with the five to seven lots that we're talking about, and never in the world did I dream that I would be out $70,000 and have unanimous approval from the Planning Commission, only to have the Board of Supervisors turn it down on the basis of failing to conform with the Ordinance.

An individual comes in here asking for a waiver because he couldn't conform with the Ordinance. And the purpose of the testimony was exactly along those lines. There were things said that require some testimony. There was mention of truck traffic.

Sitting here, I get the feeling that there was some kind of commercial delivery service there, there are all kinds of trucks going in and out of this place. There is a nursery there, a nursery that has trucks that come in in the spring and deliver trees, shrubs. They are big trucks, but they come very infrequently. A big day would be for two trucks to come in. A total year shipment of nursery stock into that area might involve ten trucks.

There has been a lot of traffic recently just because I've been building an Italian garden and the traffic involves that

construction rather than anything associated with the nursery. So that if the Board of Supervisors were to consider traffic, an impact on traffic, you are probably talking about max. ten to 20 trucks a year of any large size coming into that area.

In fact, you may not even be talking about that because currently before the Planning Commission is a road going from Geisel development over to the Blue Mountain Hotel, which is the long-term goal for any nursery traffic to go that way rather than come through the area that we currently are dealing with. So that as I saw it back in 1990 and 1991, this was a very limited thing. It involved four or five lots. It was intended to improve what was an unsafe situation and make it safer, never perfect, but safer. And that's why we asked for the various variances, that's why we asked for the waivers.

The reason I called the Chair of the Planning Commission is because I have attended the meetings and I have listened to the Chair state, and I can testify that she did state at the meeting, and so did the other members on the Commission, that we cannot in this Township grant variances or waivers because the Board of Supervisors are committed to 500-foot cul-de-sacs and they're committed to other items such as that, because this is a mountainous area and if we let people have cul-de-sacs longer than 500 feet, then people are going to start building up the mountain.

That's one of the reasons that I'm here. I think that's terribly anti-development mentality and it's one that does not conform with the Ordinance itself that provides for variances. If a township's Board of Supervisors decided that they were never going to grant variances or waivers, then our constitutional rights would be violated.

I came in here with reasons to obtain variances and waivers, and I think the reasons are justifiable. That's all I have to say and I'm ready for cross-examination.

CROSS-EXAMINATION

BY MR. ZALESKI:

Q Mr. Angino, earlier, you had indicated that at some point in time this nursery might become public. I don't know if that was in a conversation you and I were having or in front of the Board, but do you agree that that's a statement that —

A It has always been public in terms of a wholesale nursery. It's been a wholesale nursery since the early 1970's.

Q Maybe it was your gardens that you were referring to rather than the nursery.

A There is a plan in our wills that when we die, our gardens are to be given to the public.

Q My question is, where would the access to that be, through this road or —

A When I'm dead, I don't know what the

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A POLICY
on
GEOMETRIC DESIGN
of
HIGHWAYS
and
STREETS
1990

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Chapter II
DESIGN CONTROLS AND CRITERIA

INTRODUCTION

This chapter discusses those characteristics of vehicles, pedestrians, and traffic that act as criteria for the optimization or improvement in design of the various highway and street functional classes.

DESIGN VEHICLES

General Characteristics

The physical characteristics of vehicles and the proportions of variously sized vehicles using the highways are positive controls in geometric design. Therefore, it is necessary to examine all vehicle types, select general class groupings, and establish representatively sized vehicles within each class for design use. Design vehicles are selected motor vehicles with the weight, dimensions, and operating characteristics used to establish highway design controls for accommodating vehicles of designated classes. For purposes of geometric design, each design vehicle has larger physical dimensions and larger minimum turning radius than those of almost all vehicles in its class. The largest of all the several design vehicles are usually accommodated in the design of freeways.

Three general classes of vehicles have been selected, namely, passenger cars, trucks, and buses/recreational vehicles. The passenger car class includes compacts and subcompacts plus all light vehicles and light delivery trucks (vans and pickups). The truck class includes single-unit trucks, truck tractor-semitrailer combinations, and trucks or truck tractors with semitrailers in combination with full trailers. Buses/recreational vehicles include single unit buses, articulated buses, motor homes, and passenger cars or motor homes pulling trailers or boats.

The dimensions for 15 design vehicles representing vehicles within these general classes are given in Table II-1. In the design of any highway facility the largest design vehicle likely to use that facility with considerable frequency or a design vehicle with special characteristics that must be taken into account in dimensioning the facility is used to determine the design of such critical features as radii at intersections and radii

of turning roadways. Design vehicle profiles can be determined from the dimensions shown in Table II-1.

Minimum Turning Paths of Design Vehicles

Figures II-1 through II-15 present the minimum turning paths for the 15 critical design vehicles. The principal dimensions affecting design are the minimum turning radius, the tread width, the wheelbase, and the path of the inner rear tire. Effects of driver characteristics (such as the rate at which the driver approaches centripetal acceleration) and of the slip angles of wheels are minimized by assuming that the speed of the vehicle for the minimum radius (sharpest) turn is less than 10 mph.

The boundaries of the turning paths of the several design vehicles when making the sharpest turns are established by the outer trace of the front overhang and the path of the inner rear wheel. This turn assumes that the outer front wheel follows the circular arc defining the minimum turning radius as determined by the vehicle steering mechanism. The minimum radii of the outside and inside wheel paths are given in Table II-2.

Geometric design requirements for trucks and buses are much more severe than they are for passenger vehicles. Trucks and buses are wider and have longer wheelbases and greater mimimum [sic] turning radii. These are the principal characteristic dimensions affecting horizontal highway design. The longer single-unit trucks and buses require greater minimum turning radii than most vehicle combinations, but because of their greater offtracking, the longer vehicle combinations also require greater widths of turning paths.

A semitrailer combination is a truck tractor with a semitrailer, either with or without a full trailer, or a truck with one or more full trailers. Because semitrailer-combination sizes and turning characteristics vary widely, there are several semitrailer design vehicles: (1) a design vehicle representative

of medium tractor-semitrailer combinations (WB-40), (2) a design vehicle representative of larger tractor-semitrailer combinations commonly in use (WB-50), (3) a design vehicle representative of a larger tractor-semitrailer full trailer combinations commonly in use (WB-60), (4) a design vehicle representative of a larger tractor- semitrailer combination allowed on selected highways by the Surface Transportation Assistance Act of 1982 (WB-62), (5) a design vehicle representative of a larger tractor-semitrailer grandfathered on selected highways by the Surface Transportation Assistance Act of 1982 (WB-67), (6) a design vehicle representative of tractor-semitrailer full trailer-

•••

		Dimension (ft)										
		Overall			Overhang							
Design Vehicle Type	Symbol	Height	Width	Length	Front	REAR	WB[1]	WB[2]	S	T	WB[3]	WB[4]
Passenger car	P	4.25	7	19	3	5	11					
Single unit truck	SU	13.5	8.5	30	4	6	20					
Single unit bus	BUS	13.5	8.5	40	7	8	25					
Articulated bus	A-BUS	10.5	8.5	60	8.5	9.5	18		4[a]	20[a]		
Combination trucks												
Intermediate semitrailer	WB-40	13.5	8.5	50	4	6	13	27				
Large semitrailer	WB-50	13.5	8.5	55	3	2	20	30				
"Double Bottom" semi-trailer—full-trailer	WB-60	13.5	8.5	65	2	3	9.7	20	4[b]	5.4[b]	20.9	
Interstate Semitrailer	WB-62*	13.5	8.5	69	3	3	20	40-42				
Interstate Semitrailer	WB-67**	13.5	8.5	74	3	3	20	45-47				
Triple Semitrailer	WB-96	13.5	8.5	102	2.5	3.3	13.5	20.7	3.3[d]	6[d]	21.7	21.7
Turnpike Double Semitrailer	WB-114	13.5	8.5	118	2	2	22	40	2[c]	6[c]	44	
Recreation vehicle												
Motor home	MH		8	30	4	6	20					
Car and camper trailer	P/T		8	49	3	10	11	18	5			
Car and boat trailer	P/B		8	42	3	8	11	15	5			
Motor Home and Boat Trailer	MH/B		8	53	4	8	20	21	6			

* = Design vehicle with 48' trailer as adopted in 1982 STAA (Surface Transportation Assistance Act)
** = Design vehicle with 53' trailer as grandfathered in 1982 STAA (Surface Transportation Assistance Act)
a = Combined dimesion [sic] 24, split is estimated.
b = Combined dimesion [sic] 9.4, split is estimated.
c = Combined dimension 8, split is estimated.
d = Combined dimension 9.3, split is estimated.
WB[1], WB[2], WB[3], WB[4] are effective vehicle wheelbases.
S is the distance from the rear effective axle to the hitch point.
T is the distance from the hitch point to the lead effective axle of the following unit.

Table II-1. Design vehicle dimensions.

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friction factors of Figure III-21 in the simplified curve formula, the minimum safe radii for intersection curves for operation at design speed are derived as shown in Table III-17.

Design (turning) speed, V (mph)	10	15	20	25	30	35	40
Side friction factor, f	0.38	0.32	0.27	0.23	0.20	0.18	0.16
Assumed minimum superelevation, e	0.00	0.00	0.02	0.04	0.06	0.08	0.09
Total e + f	0.38	0.32	0.29	0.27	0.26	0.26	0.25
Calculated minimum radius, R (ft)	18	47	92	154	231	314	426
Suggested curvature for—design:							
Radius—minimum (ft)	25	50	90	150	230	310	430
Degree of curve—maximum	—	—	64	38	25	18	13
Average running speed (mph)	10	14	18	22	26	30	34

NOTE: For design speeds of more than 40 mph, use values for open highway conditions.

Table III-17. Minimum radii for intersection curves.

The minimum radii of Table III-17 are represented by the heavy solid line at the left in Figure III-22. The thin solid line at the upper right shows the relation between design speed and minimum radius for open highway conditions, as derived with e values shown at the upper left. The joining of the heavy and thin lines indicates that open-highway conditions on intersection curves are approached when the curvature is sufficiently flat to permit operation between 40 and 50 mph. Thus, in design of intersection curves for design speeds of above 40 mph, open highway conditions should be assumed and the design based on Tables III-6 to III-12. The square points in Figure III-22 are the observed 95-percentile speeds from the same studies represented in Figure III-21 for the locations where more than 50 vehicles were sampled. The heavy line fits these points closely, indicating further that the assumptions made in the derivation of minimum radii in Table III-17 are appropriate and that a group of the higher speed drivers will use the design speed assumed.

In addition to the design speed, the average running speed is also used in consideration of certain elements of intersection design. The points indicated by crosses in Figure III-22 are actual average speeds observed on the same intersection curves referred to. The long dashed line through these points is assumed to represent the average running speed for intersection curves. At the right this curve crosses the short dashed line, which indicates the average speed for open highways. For a given design speed on the solid (upper) curve in Figure III-22, the assumed running speed lies vertically below on the dashed curve. These running speeds are shown in the last line of Table III-17.

The above established minimum radii should be used for design preferably on the inner edge of pavement rather than on the middle of the vehicle path or the centerline of the pavement. In all cases, as much superelevation as feasible up to a practical limit should be developed. For the suggested radii shown in Table III-17, a rate of at least 0.080 should be strived for at all locations, and a rate of 0.080 to 0.100 for locations where snow or ice is not a factor. On those intersection legs where all traffic comes to a stop, as at stop signs, a lesser amount of superelevation usually is in order. Also where large trucks will be using an intersection, use of superelevation may have to be limited because these larger trucks may have trouble negotiating intersection curves with superelevation. This is particularly true where they must crossover from a roadway or ramp sloping in one direction to one sloping the other way. This will require that where there is a significant number of large trucks for each design speed flatter curves and less superelevation will have to be provided. Superelevation for curves at intersections is further discussed under that heading in Chapter IX.

Transitions and Compound Curves

Drivers turning at at-grade intersections and at interchange ramp terminals naturally follow transitional travel paths just as they do at higher speeds on the open highway. If facilities are not provided for driving in this natural manner, many drivers deviate from the intended path and develop their own transition, sometimes to the extent of encroachment on other lanes or on the shoulder. Provision for natural travel paths is best effected by the use of transition or spiral curves that may be inserted between a tangent and a circular arc or between two circular arcs of different radii. Practical designs fitting transitional paths may also be developed by the use of compound circular curves. Transitioned roadways have the added advantage of providing practical means for changing from a crowned to a superelevated cross section.

Length of Spiral

Lengths of spirals for use at intersections are determined in the same manner as they are for open highways. On intersection curves, lengths of spirals may be shorter than they are on the open highway curves, because drivers accept a more rapid change in direction of travel under intersection conditions. That is, C (the rate of change of centripetal acceleration on intersection

Chapter V

LOCAL ROADS AND STREETS

INTRODUCTION

The following guides apply to those roads functionally classified as local rural roads and local urban streets in accordance with the discussion in Chapter I. In a jurisdictional highway classification, these guides apply generally to village or city streets and township and county roads.

A local road or residential street primarily serves as access to the farm, residence, business, or other abutting property. Although local roads and streets may be planned, constructed, and operated with such service dominating, some of them properly include the "major street or highway" features of geometric design and traffic control to expedite the safe movement of through traffic. On these roads the through traffic is local in nature and extent rather than regional, intrastate, or interstate.

Local roads and streets constitute a high proportion of the roadway mileage in the United States. The traffic volumes generated by the abutting land uses are largely short trips or a relatively small part of longer trips where the local road connects with major streets or highways of higher classifications. Because of the relatively low traffic volumes and the extensive mileage, design standards for local roads and streets are of a comparatively low order as a matter of practicality. However, to provide the requisite traffic mobility and safety, together with the essential economy in construction, maintenance, and operation, they must be planned, located, and designed to be suitable for predictable traffic operations and must be consistent with the development and culture abutting the right-of-way.

In restricted or unusual conditions it may not be possible to meet these guide values. Every effort should be made to get the best possible alinement [sic], grade, sight distance, and proper drainage that are consistent with the terrain, the development (present and anticipated), the safety, and the funds available.

Drainage on the pavement itself and from the sides and subsurface is very important. Drainage inadequacies can lead to high maintenance costs and adverse operational conditions affecting the safety of the motorist. In snow regions, it is necessary to design so that there is storage space for plowed snow and proper drainage for melting conditions.

Safety is an important factor in all roadway improvements. However, it may not be practical or possible to obtain obstacle-free roadsides. Every

•••

	Design Speed (mph)				
Type of Terrain	20	30	40	50	60
Level	—	7	7	6	5
Rolling	11	10	9	8	6
Mountainous	16	14	12	10	—

Table V-4. Maximum grades.

curves occur together, there should be greater than minimum sight distance to ensure that the horizontal curves are visible to approaching drivers.

Roadway Cross Slope

Pavement or surfacing crown should be adequate to provide proper drainage. Normally, cross slopes should be as shown in Table V-5.

Surface Type[a]	Range in Rate of Cross Slope %
High	1.5 to 2.0
Intermediate	1.5 to 3.0
Low	2.0 to 6.0

[a] See Chapter IV for pavement surface types description.

Table V-5. Normal cross slopes.

Superelevation

For rural roads of high- and intermediate-type surfaces, superelevation should be not more than 0. 10 except where snow and ice conditions prevail, in

***

Design Speed mph)	Maximum e	Maximum Degree of Curve Rounded	Minimum Radius (ft)
20	.04	45.0	127
30	.04	19.0	302
40	.04	10.0	573
50	.04	6.0	955
55	.04	4.75	1,186
60	.04	3.75	1,528
20	.06	49.25	116
30	.06	21.0	273
40	.06	11.25	509
50	.06	6.75	849
55	.06	5.5	1,061
60	.06	4.25	1,348
20	.08	53.5	107
30	.08	22.75	252
40	.08	12.25	468
50	.08	7.5	764
55	.08	6.0	960
60	.08	4.75	1,206

20	.10	58.0	99
30	.10	24.75	231
40	.10	13.25	432
50	.10	8.25	694
55	.10	6.5	871
60	.10	5.25	1,091
20	.12	62.0	92
30	.12	26.75	214
40	.12	14.5	395
50	.12	9.0	637
55	.12	7.0	807
60	.12	5.75	996

NOTE: With design speeds of 30 mph or less, conditions may warrant elimination of superelevation.

Table V-6. Maximum degree of curve and minimum radius for different values of maximum superelevation.

•••

Steep-faced curbs 6 in. or higher adjacent to moving traffic lanes should be offset at least 1 ft. Where there is combination curb and gutter construction, the gutter pan width, normally 2 ft, should be used as the offset distance.

Drainage

Drainage is an important consideration in an urban area because of high runoff and the flooding potential. Surface flow from adjacent tributary areas may be intercepted by the street system. There it is collected within the roadway by curbs and gutters, ditches, etc., and conveyed to appropriate outlets. Where drains are available under or near the roadway, the flow is transferred at frequent intervals from the street cross section by grating or curb-opening inlets to basins and from there by connectors to drainage channels or underground drains.

Economic considerations usually dictate that maximum practical use be made of the street sections for surface drainage. To avoid undesirable flowline conditions, the minimum gutter grade should be 0.30 percent. However, in very flat terrain and where drainage outlet is unavailable, a gutter grade as low as 0.20 percent may be necessary. Where a drainage outlet is available, the inlets should be spaced to provide a high level of drainage protection in areas of pedestrian concentrations or where adjacent property has an unusually important public or community purpose (e.g., schools and churches). For further details see the drainage section in Chapter III.

Cul-De-Sacs and Turnarounds

A local street open at one end only should have a special turning area at the closed end. This turning area desirably should be circular and have a radius appropriate to the types of vehicle expected. Minimum outside radii of 30 ft in residential areas and 45 ft in commercial and industrial areas are commonly used.

A dead-end street narrower than 40 ft usually should be widened to enable passenger vehicles, and preferably delivery trucks, to U-turn or at least turn around by backing once. The design commonly used is a circular pavement symmetrical about the centerline of the street sometimes with a central island, as shown in Figure V-2C, which also shows minimum dimensions for the design vehicles. Although this type of cul-de-sac operates satisfactorily and looks well, better operation is obtained if the design is offset so that the entrance-half of the pavement is in line with the approach-half of the street, as shown in Figure V-2D. One steering reversal is avoided on this design. Where a radius of less than 47 ft is used, the island should be bordered by mountable curbs to permit the maneuvering of an occasional oversized vehicle.

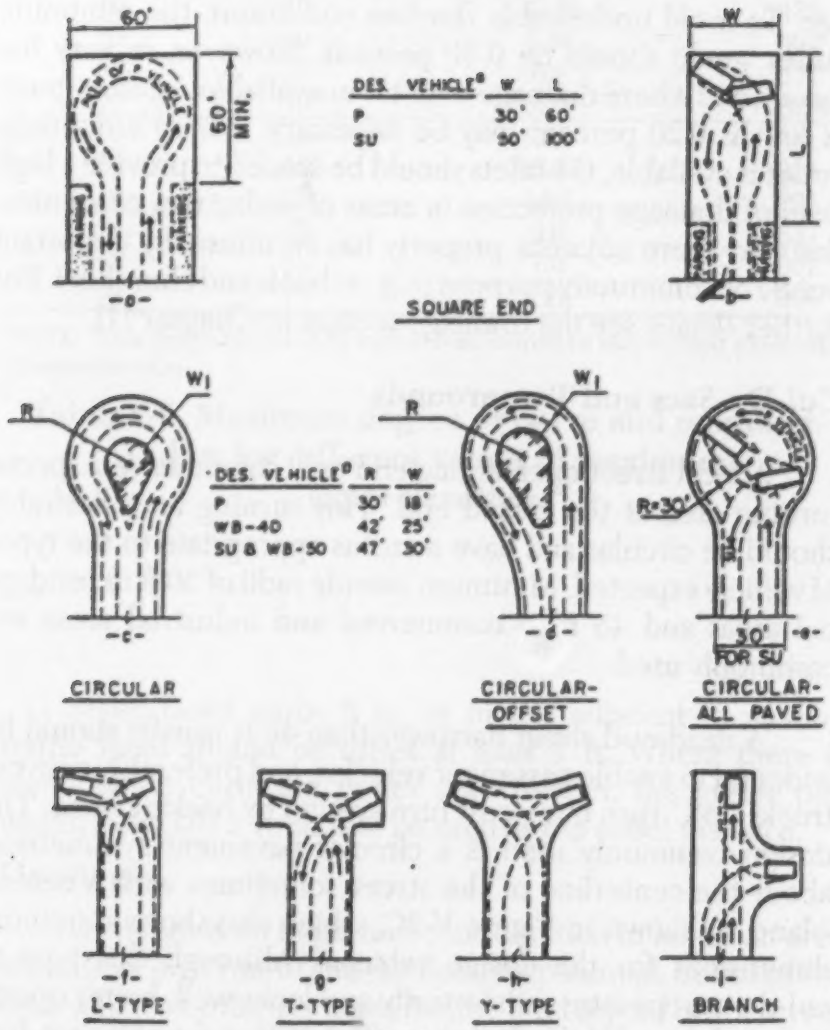

Figure V-2. Types of cul-de-sacs and dead-end streets.

BEST AVAILABLE

An all-paved plan is shown in Figure V-2E, with a 30-ft outer radius. In this case, little additional pavement is required. If the approach pavement is at least 30 ft wide, the result is a cul-de-sac on which passenger vehicles can make the customary U-turn and SU design trucks can turn by backing once. A radius of about 40 ft will enable a WB-50 vehicle to turn around by maneuvering back and forth.

Other variations or shapes of cul-de-sacs that include right-of-way and site controls may be provided to permit vehicles to turn around by backing once. Several types (Figures V-2F to V2I) may also be suitable for alleys. The geometry of a cul-de-sac must be altered if adjoining residences also use the area for parking.

Alleys

Alleys provide for accessibility and service to each individual land parcel. They are characterized by a narrow right-of-way and range in width from 16 to 20 ft in residential areas and up to 30 ft in industrial areas.

Alleys should be alined [sic] parallel to or concentric with the street property lines. It is desirable to situate alleys in such a manner that both ends of the alley are connected either to streets or to other alleys. Where two alleys intersect, a triangular corner cutoff of not less than 10 ft along each alley property line should be provided. Dead-end alleys should be provided with a turning area in accordance with Figure V-3.

Curb return radii at street intersections may range from 5 ft in residentially zoned areas to 10 ft in industrial and commercial areas where large numbers of trucks are expected.

Alleys should have grades established to meet as closely as possible the existing grades of the abutting land parcels. The longitudinal grade should not be less than 0.20.

Alley cross sections may be V-shaped with transverse slopes of 2.5 percent toward a center V gutter. Runoff is

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thereby directed to a catch basin in the alley or to connecting street gutters.

Sidewalks

Sidewalks used for pedestrian access to schools, parks, shopping areas, and transit stops and placed along all streets in commercial areas should be

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Roadway Widths for Bridges

The minimum clear width for all new bridges on streets with curbed approaches should be the same as the curb-to-curb width of the approaches. For streets with shoulders and no curbs, the clear roadway width preferably should be the same as the approach roadway width and in no case less than the width shown in Table V-9. Sidewalks on the approaches should be carried across all new structures. There should be at least one sidewalk on all street bridges.

Horizontal Clearance to Obstructions

On all streets a minimum clearance of 1.5 ft should be provided between the curb face or shoulder edge and obstructions such as utility poles, lighting poles, and fire hydrants. In areas of dense pedestrian traffic the construction of barrier-type curbing (curbing with nearly vertical facing, 6 to 9 in. high) aids in protecting the high-volume pedestrian traffic.

Trees may be minimal hazards along local streets where speeds are low (40 mph or below) and barrier curbs exist. Generally, prudence should be exercised and careful analysis should weigh the benefits against the possibly adverse effects that tree removal could have on the roadside environment.

Guardrail is not used extensively on local streets except where there is a hazard to motorists and pedestrians, such as along sections with steep foreslopes and at the approaches to overcrossing structures.

Vertical Clearance

Vertical clearance at underpasses should be at least 14 ft over the entire roadway width, to which up to 6 in. should be added to allow for future resurfacing.

Border Area

A border area should be provided along streets for the safety of motorists and pedestrians as well as for esthetic reasons. Selection of the street alinement [sic] should be based on minimizing of slopes. However, the preservation and enhancement of the environment is of major importance in the design and construction of local streets.

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ered satisfactory as minimum designs where turning speeds of 10 mph or less are appropriate. Tables IX- 1 and IX-2 summarize minimum edge of pavement designs for various design vehicles.

The dimensions and turning radii of design vehicles are identified in Chapter II. In this chapter, the following design vehicles are addressed: passenger car (P), single unit truck and bus (SU), medium tractor-semitrailer combinations (WB-40), larger tractor-semitrailer combination (WB-50), tractor-semitrailer-full trailer combinations (W-60), tractor-semitrailer combinations (WB-62 & WB-67), tractor-semitrailer-full trailer combinations (WB-96) and

Angle of Turn (degrees)	Design Vehicle	Simple Curve Radius	Simple Curve Radius with Taper		
			Radius (ft)	Offset (ft)	Taper (ft:ft)
30	P	60	—	—	—
	SU	100	—	—	—
	WB-40	150	—	—	—
	WB-50	200	—	—	—
	WB-62	360	220	3.0	15:1
45	P	50	—	—	—
	SU	75	—	—	—
	WB-40	120	—	—	—
	WB-50	—	120	2.0	15:1
	WB-62	—	140	4.0	15:1
60	P	40	—	—	—
	SU	60	—	—	—
	WB-40	90	—	—	—
	WB-50	—	95	3.0	15:1
	WB-62	—	140	4.0	15:1
75	P	35	25	2.0	10:1
	SU	55	45	2.0	10:1
	WB-40	—	60	2.0	15:1
	WB-50	—	65	3.0	15:1
	WB-62	—	140	4.0	20:1
90	P	30	20	2.5	10:1
	SU	50	40	2.0	10:1
	WB-40	—	45	4.0	10:1
	WB-50	—	60	4.0	15:1
	WB-62	—	120	4.0	30:1

Table IX-1. Minimum edge-of-pavement designs for turns at intersections.

Angle of Turn (degrees)	Design Vehicle	Simple Curve Radius	Simple Curve Radius with Taper		
			Radius (ft)	Offset (ft)	Taper (ft:ft)
105	P	—	20	2.5	8:1
	SU	—	35	3.0	10:1
	WB-40	—	40	4.0	10:1
	WB-50	—	55	4.0	15:1
	WB-62	—	115	3.0	30:1
120	P	—	20	2.0	10:1
	SU	—	30	3.0	10:1
	WB-40	—	35	5.0	8:1
	WB-50	—	45	4.0	15:1
	WB-62	—	100	5.0	25:1
135	P	—	20	1.5	15:1
	SU	—	30	4.0	8:1
	WB-40	—	30	8.0	6:1
	WB-50	—	40	6.0	10:1
	WB-62	—	80	5.0	20:1
150	P	—	18	2.0	10:1
	SU	—	30	4.0	8:1
	WB-40	—	30	6.0	8:1
	WB-50	—	35	7.0	6:1
	WB-62	—	60	10.0	10:1
180	P	—	15	0.5	20:1
	SU	—	30	1.5	10:1
	WB-40	—	20	9.5	5:1
	WB-50	—	25	9.5	5:1
	WB-62	—	55	10.0	15:1

Table IX-1. Continued.

GUIDELINES FOR THE DESIGN OF LOCAL ROADS AND STREETS

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
BUREAU OF DESIGN

AUGUST 1990 EDITION

PUBLICATION 70

FOR ADDITIONAL INFORMATION CONT

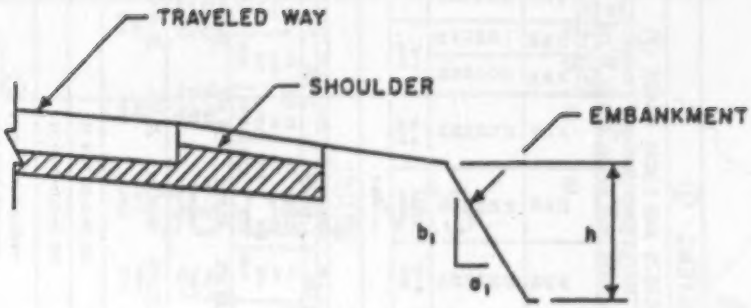
BEST AVAILAB

BLE COPY

RURAL DESIGN CRITERIA

	FUNCTIONAL CLASSIFICATION SYSTEMS (1)													
	INTERSTATE AND OTHER LIMITED ACCESS FREEWAYS	ARTERIALS	COLLECTORS AND LOCAL ROADS (2)											
			DHV (3) OVER 400		DHV (3) 201 TO 400		DHV (3) 101 TO 200	CURRENT ADT (3) OVER 400	CURRENT ADT 251 TO 400	CURRENT ADT 101 TO 250		CURRENT ADT 50 AND UNDER	
			COLL.	L.R.	COLL.	L.R.				COLL.	L.R.	COLL.	L.R.
DESIGN SPEED (MPH) (4) — LEVEL	70	70	60	50	60	50	50	60 (13)	40 (14)	40 (15)	30 (16)	40 (15)	30 (16)
DESIGN SPEED (MPH) (4) — ROLLING	60	60	50	40	50	40	40	40	30	30	20	30	20
DESIGN SPEED (MPH) (4) — MOUNTAINOUS	50	50	40	30	40	30	30	30	20	20	20	20	20
PAVEMENT WIDTHS (FEET) (7) (8) — DESIGN SPEED 70 MPH	4 OR MORE 12'-0" LANES DIVIDED (9)	12'-0" LANES (9)(10)(11)	24	24	24 (11)	24 (11)	22	22	22	22	—	22	—
DESIGN SPEED 60 MPH			24	24			22	22	22	20	20	22	20
DESIGN SPEED 50 MPH			24	24			22	22	22	20	20	20	20
DESIGN SPEED 40 MPH			24 (11)	22			22	22	20	20	20	20	20
DESIGN SPEED 30 MPH			24	22			20	20	20	20	18	20	18
DESIGN SPEED 20 MPH			24	22			20	20	20	20	18	20	18
SHOULDER WIDTHS	10'-0" RIGHT SHOULDER (12) 8'-0" GRADED, 4'-0" PAVED LEFT SHOULDER MEDIANS (SEE TY) (13)	SEE NOTE (14)	8'-0" MIN.		8'-0" MIN.		6'-0" MIN.	4'-0" MIN.	4'-0" MIN.	4'-0" MIN.		2'-0" MIN.	
MEDIAN WIDTHS (15)	60'-0" TO 90'-0" (DES.) 36'-0" (MIN.)	88'-0" (DES.) 4'-0" (MIN.) (16)	NONE										
CROSS SLOPES S.E. — MAXIMUM	0.08 FT./FT.	0.08 FT./FT.	0.08 FT./FT.										
CROSS SLOPES S.E. — MINIMUM	0.02 FT./FT.	0.02 FT./FT.	0.02 FT./FT.										
VERTICAL GRADES (17) — DESIGN SPEED	70 MPH (18)	60 MPH (18)	50 MPH (18)	70 MPH	60 MPH	50 MPH	COLL.	L.R.	COLL.	L.R.	COLL.	L.R.	COLL.	L.R.
MAX. — LEVEL	3%	3%	4%	3%	3%	4%	50 MPH		40 MPH		30 MPH		20 MPH	
MAX. — ROLLING	4%	4%	5%	4%	4%	5%	5% (18)	6% (18)	7% (18)	8% (18)	9% (18)	7% (18)	11% (18)	8%
MAX. — MOUNTAINOUS	5%	6%	6%	5%	6%	6%	6%	9%	8%	10%	9%	12%	14%	16%
MINIMUM	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
HORIZONTAL CURVATURE — DESIGN SPEED				70 MPH	60 MPH	50 MPH	50 MPH	40 MPH	30 MPH	20 MPH				
MAX. — LEVEL	3°-00'	3°-00'		4°-45'	7°-30'	11°-15'	22°-45'	53°-30'						
MAX. — ROLLING	4°-45'	4°-45'		4°-45'	7°-30'	18°-15'	22°-45'	53°-30'						
MAX. — MOUNTAINOUS	7°-30'	7°-30'		4°-45'	7°-30'	18°-15'	22°-45'	53°-30'						
SIGHT DISTANCES (FEET) (19) — DESIGN SPEED	70 MPH	60 MPH	50 MPH	70 MPH	60 MPH	50 MPH	50 MPH	40 MPH	30 MPH	20 MPH				
MIN. STOPPING	625	525	400	625	525	400	525	375	200	125				
MIN. PASSING	2500	2100	1600	2500	2100	1600	2100	1500	1100	800				
GUIDE RAIL AND MEDIAN BARRIER	SEE DM-2, CHAPTER 12	SEE DM-2, CHAPTER 12	SEE DM-2, CHAPTER 12											
CLEAR ZONE WIDTHS (20)	SEE DM-2, CHAPTER 12	SEE DM-2, CHAPTER 12	SEE DM-2, CHAPTER 12											
BRIDGE WIDTHS (21) (22)	PAVEMENT WIDTH PLUS RIGHT SHOULDER PLUS 6'-0" LEFT SHOULDER (23) (24)	PAVEMENT WIDTH PLUS SHOULDERS EACH SIDE (25)	PAVEMENT WIDTH PLUS SHOULDERS EACH SIDE (25)											
VERTICAL CLEARANCES	16'-6" MIN., SEE DM-4	16'-6" MIN., SEE DM-4	14'-6" MIN., SEE DM-4											
RIGHT-OF-WAY WIDTHS	SEE NOTE (21)	SEE NOTE (21)	SEE NOTE (21)											
LEVELS OF SERVICE	SEE 1985 HCM	SEE 1985 HCM	SEE 1985 HCM											

SEE RURAL DESIGN CRITERIA NOTES ON PAGE 2.1.11.



EMBANKMENT SLOPE ($S = a_1 : b_1$)	EMBANKMENT HEIGHTS (h) IN FEET			
	AVERAGE DAILY TRAFFIC (ADT)			
	> 5000	751 TO 5000	401 TO 750	≤ 400
1 1/2 : 1	4.0	6.0	9.0	17.0
2 : 1	8.0	10.0	16.0	31.0
2 1/2 : 1	12.0	16.0	23.0	49.0
3 : 1 OR FLATTER	GUIDE RAIL NOT REQUIRED			

TABLE 2.2
BARRIER REQUIREMENTS FOR
EMBANKMENT HEIGHTS

CHAPTER 3
LOCAL URBAN ROAD SYSTEM

3.0 INTRODUCTION

As in Chapter 2 for the local rural road system, the local urban road system also utilizes the basic concept of functional classification as well as the average daily traffic (ADT) volumes. The differences in the nature and intensity of development in rural and urban areas warrant corresponding differences in rural system characteristics relative to the correspondingly named urban system characteristics. The hierarchy of functional classification systems for the urban area system is the same as for the rural area system. These systems for the entire urban area system and their associated service characteristics are presented on page 3.2.

There are three (3) general local urban road system functional classifications established that include Arterials, Collectors and Local Access Roads.

The Arterial classification usually consists of extensions of rural arterials or the State highway system network into and through the urban area. They may carry major traffic movements entering and leaving the area. The principle [sic] function of an arterial is to provide traffic service to major movements rather than to land service. They may carry local routes and provide intra-community continuity, but they should not penetrate the residential neighborhood. Most urban State highway system networks function as arterials and, depending on the extent of the network within the urban area, many small urban areas may not generate sufficient internal travel to warrant arterial service for local highways.

The Collector classification includes those highways that collect traffic from local access highways and distribute them into the arterial systems or their ultimate destination and vice

versa. Collectors may penetrate neighborhood developments and they may carry through traffic.

The Local Access classification provides direct access to abutting land and also permits connections to the higher order classification systems. Abutting land may be used for residential, commercial or other purposes. The localized nature of traffic movement rather than the type of land development is the criterion. Traffic volumes are low and service to through traffic movement is usually deliberately discouraged by design or regulations.

•••

9. Improvements or installation of lighting.

10. Installation of special signing and marking.

11. Prohibition of vehicle parking.

12. Designation of one-way streets.

For additional information and criteria relative to the design requirements and construction practices for pedestrian facilities, refer to the Department's Design Manual Part 2, Chapter 6 and the AASHTO Green Book, Chapters IV, V, VI and VII. For additional information concerning general considerations and physical characteristics of pedestrians and handicapped pedestrian characteristics, refer to the AASHTO Green Book, Chapter II.

F. Cul-De-Sacs And Turnarounds. A cul-de-sac represents a local street open at one end only with a special provision for turning around. This turning area desirably should be circular with a radius appropriate to the types of vehicles expected. A minimum outside radius of thirty (30) feet in residential areas (forty (40) feet minimum for Department

projects) and forty-five (45) feet in commercial and industrial areas is commonly utilized.

The cul-de-sac commonly used represents a circular pavement symmetrical about the centerline of the street that may contain a central island. Although this design operates satisfactorily and has a pleasing appearance, better vehicle operation is achieved if the design is offset so that the entrance-half of the pavement is in line with the approach-half of the street. Where the radius used is less than forty-seven (47) feet, the central island should be bordered by mountable curb to permit an occasional oversized vehicle to maneuver.

Where the approach pavement width is at least thirty (30) feet, the cul-de-sac can accommodate passenger cars and a single unit truck can turn by backing once. A radius of approximately forty (40) feet shall enable truck tractor-semitrailer combinations to turn around by maneuvering back and forth. For additional information concerning cul-de-sac and turn-around design guidelines and geometric features, refer to the AASHTO Green Book, Chapter V.

G. Alleys. Alleys provide for accessibility and service to each individual land parcel. They are characterized by a narrow right-of-way and range in width from sixteen (16) to twenty (20) feet in residential areas and up to thirty (30) feet in industrial areas.

Alleys should be aligned parallel to or concentric with the street property lines and should be situated in such a manner that both ends are connected either to streets or to other alleys. All alleys should have grades established to meet, as closely as possible, the existing grades of the abutting land parcels. The longitudinal grade should not be less than 0.20.

ORDINANCE

AN ORDINANCE AMENDING THE MIDDLE PAXTON TOWNSHIP SUBDIVISION AND LAND DEVELOPMENT ORDINANCE ORIGINALLY ADOPTED FEBRUARY 26, 1979, AND AMENDED JANUARY 31, 1980, DECEMBER 5, 1983, AND FEBRUARY 5, 1990

BE IT ENACTED AND ORDAINED by the Supervisors of the Township of Middle Paxton, Dauphin County, under and by virtue of the authority contained in the Second Class Township Code, it is hereby ENACTED AND ORDAINED by the authority of the same as follows:

1. The Middle Paxton Township Subdivision and Land Development ordinance is hereby amended to read as follows (additions are indicated by underline; deletions by ~~strikeout~~).

Section 301, Definitions, shall be amended as follows:

BUILDING SETBACK LINE (SETBACK): The line within a property defining the required minimum distance between any ~~enclosed~~ structure and the adjacent right-of-way, and the line defining side and rear yards, where required.

SETBACK (~~AND BUILDING SETBACK LINE~~): See Building Setback Line definition. The line within a property defining the required minimum distance between any enclosed structure and the ultimate adjacent right-of-way, and the line defining rear and side yards where required.

Section 501.i, relating to Cul-de-Sacs or Dead End Streets, shall be amended as follows:

Cul-de-sacs or dead end streets (herein referred to as "cul-de-sacs") designed to be so permanently, shall not

exceed ~~five hundred (500) feet~~ eight hundred (800) feet in length and shall be provided with a turn around having minimum dimensions for right-of-way and cartway widths as indicated in the preceding section, except in non-residential areas where cul-de-sacs may exceed ~~five hundred (500) feet~~ eight hundred (800) feet in length, where under special circumstances, the governing body under recommended action of the Commission deems such additional length necessary. The total combined length of any cul-de-sac or combination of cul-de-sacs shall not be greater than the maximum allowable length of a cul-de-sac in the zoning district in which the cul-de-sac(s) is located. The preceding sentence shall limit the combined length of two ~~or more~~ connecting cul-de-sacs. The length of one cul-de-sac which intersects with another cul-de-sac shall be added to the length of the intersecting cul-de-sac to determine the total allowable length of the two (2) ~~or more~~ intersecting cul-de-sacs. ~~For example, a three hundred foot cul-de-sac which intersects with two one hundred foot cul-de-sacs which intersect with two one hundred cul-de-sacs [sic] will have a combined length of five hundred (500) feet.~~ For example, a five hundred foot (500) cul-de-sac which intersects with one three hundred (300) foot cul-de-sac will have a combined length of ~~one hundred (300)~~ eight hundred (800) feet. There shall be no more than one cul-de-sac street intersecting with another cul-de-sac street.

Section 507(b) relating to Flood Plain Area Standards is amended as follows:

No subdivision plan or proposed subdivision plan shall be approved by the Board of Supervisors of the Township of Middle Paxton in the areas designated by the official flood

insurance study referred to in Section 507.a. hereof or as designated in Section 1102 of the Middle Paxton Township Zoning Ordinance unless and until compliance with the following requirements, in addition to all other requirements of this ordinance, has been established:

Section 803.c, redefines "Mobile Home Park" as follows:

A parcel of land of not less than twenty acres under single ownership which has been planned and approved for the placement of mobile homes for non-transient use, consisting of two or more mobile home lots.

Section 805.b, relating to the size of lots in Mobile Home Parks is amended as follows:

Mobile home lots shall contain 12,500 square feet ~~22,500~~ of area and a width of at least 80 feet ~~150~~ at the building or right-of-way line.

Section 806.c, Other Site Improvements, in Mobile Home Parks is amended by adding the following:

7. Each manufactured (mobile) home in a manufactured (mobile) home park shall be serviced by public water and public sewer, which extensions for service shall be provided for by the developer.

8. All streets constructed in the mobile home park shall conform and be constructed in accordance with the standards set forth in Section 501.

2. If any section, clause, provision or portion of these regulations shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of these regulations.

3. These ordinance amendments shall become effective in accordance with law.

DULY ENACTED AND ORDAINED this 2nd day of May, 1994, by the Board of Supervisors of the Township of Middle Paxton, Dauphin County, Pennsylvania, in lawful session, duly assembled.

TOWNSHIP OF MIDDLE PAXTON
DAUPHIN COUNTY,
PENNSYLVANIA
BY: /s/Richard Peffer, Chairman
BY: /s/Donald Wilhelm, Supervisor
BY: /s/J. Thomas Van Wagner, Jr.
Supervisor

ATTEST:
/s/J. Thomas Van Wagner, Jr.
Secretary

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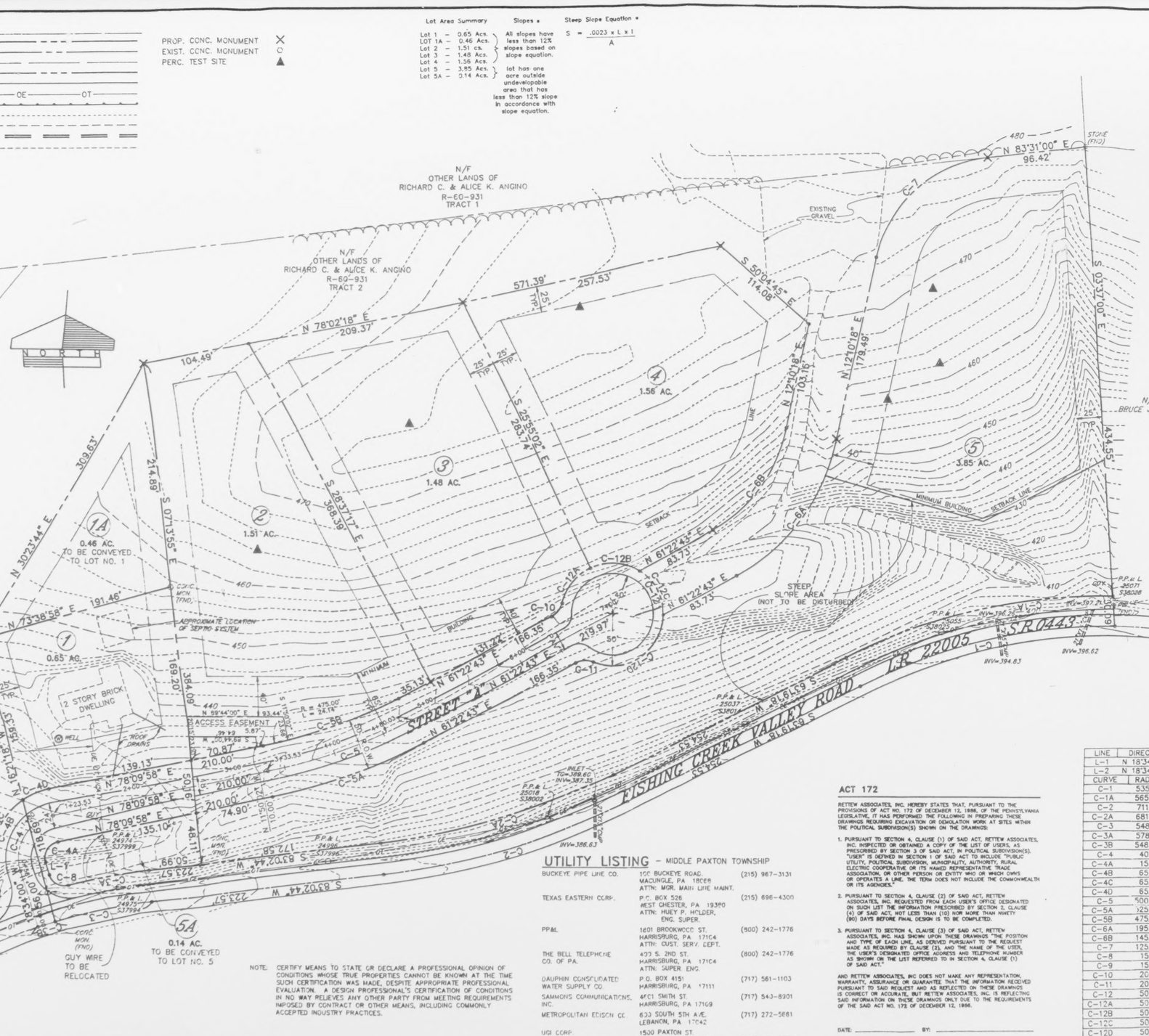
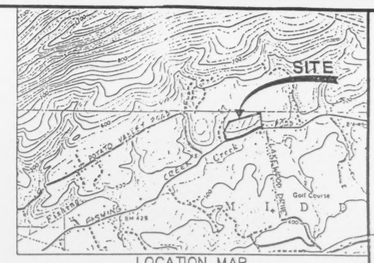
LEGEND

BOUNDARY LINE
LOT LINE
SETBACK LINE
REQ'D R.O.W. LINE
EX. PAV'T EDGE
EX. UTILITY LINE — OE — OT —
GUIDE RAIL
2' EX. CONTOUR
10' EX. CONTOUR
STORM DRAIN
EX. TOPO

PROP. CONC. MONUMENT ×
EXIST. CONC. MONUMENT ○
PERC. TEST SITE ▲

Lot Area Summary		Slopes *	Steep Slope Equation *
Lot 1 –	0.65 Acs.	All slopes have less than 12% slopes based on slope equation.	$S = \frac{.0023 \times L \times I}{A}$
LOT 1A –	0.46 Acs.		
Lot 2 –	1.51 cs.		
Lot 3 –	1.48 Acs.		
Lot 4 –	1.56 Acs.		
Lot 5 –	3.85 Acs.		
Lot 5A –	0.14 Acs.	lot has one acre outside undevelopable area that has less than 12% slope in accordance with slope equation.	





LOCATION MAP
SCALE: 1"=2000'

GENERAL NOTES

1. Statement of Proposed Use:
   A. Lots 1 thru 5 shall be developed strictly as single family residential development as per the regulations of the Middle Paxton Township Zoning Ordinance.
   B. Residual Lands of Tract No. 2 will not be a seperate buildable Lot with this Subdivision Plan.
2. Access to the State Highway shall be only as authorized by a PENN D.O.T. Highway Occupancy Permit.
3. Existing contours, site data and property boundary was taken from an actual field survey dated 1-12-90 by Rettew Associates, Inc.
4. Benchmark ✣ used is first floor elevation of two story brick dwelling, assumed elevation = 439.88.
5. The contractor shall perform work in accordance with applicable Township codes, utility regulations, and construction specifications.
6. The contractor shall check and verify all dimensions and existing field conditions at the site prior to starting construction.
7. Utility locations shown are approximate. Actual locations and depths shall be verified by the contractor with the utility prior to starting construction.
8. To protect the existing utilities and maintain uninterrupted service. Any damage done due to his negligence shall be immediately and completely repaired at his expense.
9. The contractor shall be responsible for all traffic control, trench barricading and covering, and sheeting and shoring.
10. Swales and detention basin shall be kept free of all structures, fill and other encroachments.
11. This site is to utilize on-site septic system and on-site well water system.
12. Stormwater management facilities shall be owned and maintained by the owner. The municipality shall have the right to enter and inspect the facility at any time. The municipality shall retain the right to authorize corrective measures to be performed when warranted.
13. All easements and rights-of-way have been shown on the plan and all the utilities in the Township have been contacted.
14. The developer will comply with all applicable Middle Paxton Township Ordinances in effect at the time of submission of the preliminary plan.
15. The applicant is requesting a waiver of Section 501, Paragraph "g" for minimum centerline radius.
16. The applicant is requesting a waiver of Section 501, Paragraph "f" for cul-de-sac length.
17. Street "a" will be a private street and will be maintained by the homeowners association.
18. Rettew Associates performed a routine wetlands investigation in April 1990. The investigation showed that the proposed development will not encroach upon any wetland areas.
19. All lot owners shall be responsible for the maintenance and implementation of required erosion and sedimentation controls as shown on sheet 3 of 3, and as approved by the Dauphin County conservation district.
20. Lot nos. 1A and 5A are not separate individual building lots.
21. This parcel is not subject to a zone "A" 100 year Flood Hazard. (PER FEMA MAP # 420280 0015)
22. Proposed wells will be located a minimum of 100' from sewage absorption area and a minimum of 50' from septic tanks-in accordance with Chapter 73 DER.

MUNICIPALITY

MIDDLE PAXTON TWP.
P.O. BOX 277
1304 OVERLOOK ST.
DAUPHIN, PA 17018
(717) 921-8128

DEVELOPER

C. KEN VANDENBURGH
3718 WALNUT ST.
HARRISBURG, PA 17108
(717) 652-8535

LINE	DIRECTION	DISTANCE
L-1	N 18°34'00" W	12.35'
L-2	N 18°34'00" W	12.35'

CURVE	RADIUS	LENGTH	DELTA	TANGENT	BEARING	CHORD
C-1	535.12'	257.06'	27°31'26"	131.06'	S 77°05'01" W	254.60'
C-1A	565.12'	269.14'	27°17'12"	137.17'	S 76°57'54" W	266.60'
C-2	711.70'	245.00'	19°43'28"	123.72'	N 73°11'01" E	243.79'
C-2A	681.70'	234.67'	19°43'28"	118.51'	N 73°11'01" E	233.52'
C-3	548.91'	94.25'	09°50'16"	47.24'	S 78°07'36" W	94.13'
C-3A	578.91'	78.31'	07°45'02"	39.21'	S 79°10'13" W	78.25'
C-3B	548.91'	17.00'	01°46'28"	8.50'	S 72°19'14" W	17.00'
C-4	40.00'	67.53'	96°43'59"	45.00'	S 29°47'59" W	59.79'
C-4A	15.00'	25.32'	96°43'59"	16.87'	S 29°47'59" W	22.42'
C-4B	65.00'	109.74'	96°43'59"	73.12'	S 29°47'59" W	97.16'
C-4C	65.00'	83.42'	73°32'07"	48.57'	N 18°12'04" E	77.81'
C-4D	65.00'	26.32'	23°11'51"	13.34'	N 66°34'03" E	26.14'
C-5	500.00'	146.50'	16°47'16"	73.78'	N 69°46'21" E	145.98'
C-5A	525.00'	153.82'	16°47'16"	77.47'	N 69°46'21" E	153.28'
C-5B	475.00'	139.17'	16°47'16"	70.09'	N 69°46'21" E	138.68'
C-6A	195.00'	167.47'	49°12'25"	89.29'	N 36°46'30" E	162.37'
C-6B	145.00'	124.53'	49°12'25"	66.40'	N 36°46'30" E	120.74'
C-7	125.00'	155.65'	71°20'43"	89.73'	S 47°50'39" W	145.79'
C-8	15.00'	22.55'	86°08'17"	14.02'	S 61°38'09" E	20.49'
C-9	15.00'	22.55'	86°08'17"	14.02'	N 24°30'09" E	20.49'
C-10	20.00'	17.45'	49°59'41"	9.33'	N 36°22'52" E	16.90'
C-11	20.00'	17.45'	49°59'41"	9.33'	S 86°22'34" W	16.90'
C-12	50.00'	244.34'	279°59'23"	41.96'	N 28°37'17" W	64.29'
C-12A	50.00'	45.99'	52°41'56"	24.77'	N 37°44'00" E	44.38'
C-12B	50.00'	50.00'	57°17'45"	27.32'	S 87°16'10" E	47.94'
C-12C	50.00'	52.36'	60°00'00"	28.87'	S 28°37'17" E	50.00'
C-12D	50.00'	95.99'	109°59'41"	71.40'	S 56°22'34" W	81.91'

UTILITY LISTING - MIDDLE PAXTON TOWNSHIP

BUCKEYE PIPE LINE CO.	100 BUCKEYE ROAD, MACUNGIE, PA 18062 ATTN: MGR. MAIN LINE MAINT.	(215) 967-3131
TEXAS EASTERN CORP.	P.O. BOX 526 WEST CHESTER, PA 19380 ATTN: HUEY P. HOLDER, ENG. SUPER.	(215) 696-4300
PP&L	1601 BROOKWOOD ST. HARRISBURG, PA 17104 ATTN: CUST. SERV. DEPT.	(800) 242-1776
THE BELL TELEPHONE CO. OF PA.	423 S. 2ND ST. HARRISBURG, PA 17104 ATTN: SUPER. ENG.	(800) 242-1776
DAUPHIN CONSOLIDATED WATER SUPPLY CO.	P.O. BOX 4151 HARRISBURG, PA 17111	(717) 561-1103
SAMMONS COMMUNICATIONS, INC.	4FCI SMITH ST. HARRISBURG, PA 17109	(717) 540-8301
METROPOLITAN EDISON CO.	630 SOUTH 5TH AVE. LEBANON, PA 17042	(717) 272-5661
UGI CORP.	1500 PAXTON ST. HARRISBURG, PA 17104	(800) 242-1776

NOTE: CERTIFY MEANS TO STATE OR DECLARE A PROFESSIONAL OPINION OF CONDITIONS WHOSE TRUE PROPERTIES CANNOT BE KNOWN AT THE TIME SUCH CERTIFICATION WAS MADE, DESPITE APPROPRIATE PROFESSIONAL EVALUATION. A DESIGN PROFESSIONAL'S CERTIFICATION OF CONDITIONS IN NO WAY RELIEVES ANY OTHER PARTY FROM MEETING REQUIREMENTS IMPOSED BY CONTRACT OR OTHER MEANS, INCLUDING COMMONLY ACCEPTED INDUSTRY PRACTICES.

ACT 172

RETTEW ASSOCIATES, INC. HEREBY STATES THAT, PURSUANT TO THE PROVISIONS OF ACT NO. 172 OF DECEMBER 12, 1986, OF THE PENNSYLVANIA LEGISLATIVE, IT HAS PERFORMED THE FOLLOWING IN PREPARING THESE DRAWINGS REQUIRING EXCAVATION OR DEMOLATION WORK AT SITES WITHIN THE POLITICAL SUBDIVISION(S) SHOWN ON THE DRAWINGS:

1. PURSUANT TO SECTION 4, CLAUSE (1) OF SAID ACT, RETTEW ASSOCIATES, INC. INSPECTED OR OBTAINED A COPY OF THE LIST OF USERS, AS PRESCRIBED BY SECTION 3 OF SAID ACT, IN POLITICAL SUBDIVISION(S). "USER" IS DEFINED IN SECTION 1 OF SAID ACT TO INCLUDE "PUBLIC UTILITY, POLITICAL SUBDIVISION, MUNICIPALITY, AUTHORITY, RURAL ELECTRIC COOPERATIVE OR ITS NAMED REPRESENTATIVE TRADE ASSOCIATION, OR OTHER PERSON OR ENTITY WHO OR WHICH OWNS OR OPERATES A LINE. THE TERM DOES NOT INCLUDE THE COMMONWEALTH OR ITS AGENCIES."
2. PURSUANT TO SECTION 4, CLAUSE (2) OF SAID ACT, RETTEW ASSOCIATES, INC. REQUESTED FROM EACH USER'S OFFICE DESIGNATED ON SUCH LIST THE INFORMATION PRESCRIBED BY SECTION 2, CLAUSE (4) OF SAID ACT, NOT LESS THAN (10) NOR MORE THAN NINETY (90) DAYS BEFORE FINAL DESIGN IS TO BE COMPLETED.
3. PURSUANT TO SECTION 4, CLAUSE (3) OF SAID ACT, RETTEW ASSOCIATES, INC. HAS SHOWN UPON THESE DRAWINGS THE POSITION AND TYPE OF EACH LINE, AS DERIVED PURSUANT TO THE REQUEST MADE AS REQUIRED BY CLAUSE (2), AND THE NAME OF THE USER, THE USER'S DESIGNATED OFFICE ADDRESS AND TELEPHONE NUMBER AS SHOWN ON THE LIST REFERRED TO IN SECTION 4, CLAUSE (1) OF SAID ACT.

AND RETTEW ASSOCIATES, INC DOES NOT MAKE ANY REPRESENTATION, WARRANTY, ASSURANCE OR GUARANTEE THAT THE INFORMATION RECEIVED PURSUANT TO SAID REQUEST AND AS REFLECTED ON THESE DRAWINGS IS CORRECT OR ACCURATE, BUT RETTEW ASSOCIATES, INC. IS REFLECTING SAID INFORMATION ON THESE DRAWINGS ONLY DUE TO THE REQUIREMENTS OF THE SAID ACT NO. 172 OF DECEMBER 12, 1986.

DATE: _____ BY: _____

ALL STREETS SHOWN HEREON IF NOT PREVIOUSLY DEDICATED, ARE HEREBY TENDERED FOR DEDICATION. APPROVAL OF THIS PLAN DOES NOT CONSTITUTE ACCEPTANCE OF THE STREETS SHOWN HEREON. IT IS HEREBY CERTIFIED THAT THE UNDERSIGNED HAS/HAVE LEGAL OR EQUITABLE TITLE TO THE LAND SHOWN.

_____ OWNER
_____ OWNER

STATE OF PENNSYLVANIA
COUNTY OF _____ S.S.

PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC IN AND FOR THE STATE AND COUNTY AFORESAID.

WHO ACKNOWLEDGES THIS PLAN TO BE _____ ACT AND DEED AND DESIRES THE SAME TO BE RECORDED AS SUCH.

WITNESS MY HAND AND NOTARY SEAL THIS ____ DAY OF _____ 19____

RECOMMENDED FOR APPROVAL THIS ____ DAY OF _____ 19____ BY THE PLANNING COMMISSION OF MIDDLE PAXTON TOWNSHIP

_____ CHAIRMAN
_____ SECRETARY

APPROVED THIS ____ DAY OF _____ 19____ BY THE BOARD OF ~~COMMISSIONERS~~/SUPERVISORS OF MIDDLE PAXTON TOWNSHIP

_____ PRESIDENT/CHAIRMAN
_____ SECRETARY

RECOMMENDED FOR APPROVAL THIS ____ DAY OF _____ 19____ BY THE ENGINEER OF MIDDLE PAXTON TOWNSHIP

_____ ENGINEER

- AFFIX COUNTY STAMP HERE -

THIS PLAT WAS REVIEWED AT THE _____
STAGE BY THE DAUPHIN COUNTY PLANNING
COMMISSION ON THE ____ DAY OF _____ 19____

_____ CHAIRMAN
_____ SECRETARY

RECORDED IN THE OFFICE FOR RECORDING OF DEEDS, IN AND FOR THE COUNTY OF DAUPHIN
COMMONWEALTH OF PENNSYLVANIA
IN SUBDIVISION PLAN BOOK _____ VOLUME ____
PAGE ____. WITNESS MY HAND AND SEAL OF OFFICE
THIS ____ DAY OF _____ 19____
RECORDER _____

OWNER AND SUBDIVIDER:
RICHARD C. & ALICE K. ANGINO
4503 NORTH FRONT STREET
HARRISBURG, PA. 17110

SOURCE OF TITLE:
R-60-931 (TRACT No. 2)
TAX MAP REFERENCE:
MAP 43-36 PARCELS 28, 29, & 89

SITE DATA:
TOTAL SITE AREA: 16± ACRES (TRACT No. 2)
PAVED SURFACE: ± 13,500 SQ. FT.
TOTAL AREA TO BE DEVELOPED: 10.59 AC.
PROPOSED WATER & SEWER: ON SITE

ZONING DATA:
ZONING - R-A RESIDENTIAL AGRICULTURE
MINIMUM YARD REQUIREMENTS:
FRONT: 40'
SIDE: 25'
REAR: 25'
TYPE OF DEVELOPMENT: RESIDENTIAL SUBDIVISION

EXHIBIT 46

NO.	DATE	REVISION
2	4/11/91	REVISED AS PER TOWNSHIP COMMENTS
1	2/1/91	REVISED AS PER TOWNSHIP COMMENTS

SEAL
I, HERBERT OSTER, THIS PLAN TO BE CORRECT AS SHOWN.
SEAL
I, HERBERT OSTER THIS PLAN TO BE CORRECT AS SHOWN.

MANAGER: B. R. DAWOOD
DESIGN BY: R.R. | CHKD BY: BRD
DRAWN BY: J.A.C./C.D.K. | CHKD BY: D.R.D.
SURV. CHIEF: R.B.O./L.R.M. | DATE: 3-26-91
FIELDBOOK NO. 1-84, 2-49-73, 2-80

CLIENT
RICHARD C. & ALICE K. ANGINO
4503 NORTH FRONT STREET
HARRISBURG, PA. 17110

1" = 50'
0 25 50 100 150
SCALE

RETTEW
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TITLE
LAYOUT PLAN
FISHING CREEK ACRES
TOWNSHIP OF MIDDLE PAXTON
COUNTY OF DAUPHIN
COMMONWEALTH OF PENNSYLVANIA

SHEET NO. 1 OF 3
DWG. NO. 89706-05
ALSO SEE #89706-05
89706051/ISH

Supreme Court, U.S.
FILED
JUL 25 1996
CLERK

(2)

No. 95-2055

In The

Supreme Court of the United States

October Term, 1995

RICHARD C. ANGINO and
ALICE K. ANGINO,

Petitioners,

vs.

BOARD OF SUPERVISORS OF
MIDDLE PAXTON TOWNSHIP,

Respondent.

On Petition For Writ Of Certiorari
To The Commonwealth Court Of Pennsylvania

BRIEF IN OPPOSITION OF RESPONDENTS

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COUNTER-STATEMENT OF THE CASE

Petitioners Angino (the "Anginos") purchased 52 acres of land in 1971, on which they built their home. In 1979 the Anginos received approval from the Board of Supervisors of Middle Paxton Township (the "Board"), the respondent in this case, to build a house and a private road on a ten acre tract of the land located along State Highway Route 443. The house and the road were built.

On October 26, 1990 the Anginos submitted to the Township a Preliminary/Final Subdivision Plan (the "Plan") for development of a five-lot subdivision of the ten-acre tract, to be known as Fishing Creek Acres. The lots in the subdivision would be accessed by the private road that had been built in 1979. This road was already being used by large trucks to access the Anginos' nursery, which was located on another portion of the Anginos' property.

The ten-acre plot of land to be developed consists of a rectangle of approximately 11 acres which runs east and west along the north side of State Highway Route 443 (Fishing Creek Valley Road). The land is steeply inclined, with slopes of 15%-25%, and is predominantly wooded. Because of the nature of the land, and because of the location of the house that had already been built, the Anginos' Plan requested several variances from the requirements of the Township's Subdivision and Land Development Ordinance (the "Ordinance").

Pursuant to the Ordinance, the Plan was sent to the Township's Planning Commission for review and comment. The Planning Commission identified 24 changes necessary to bring the Plan into compliance with the Ordinance. At the Anginos' request, the consideration of

the Plan was then put on hold so that the developer could address the Planning Commission's concerns.

On March 28, 1991 the Anginos submitted a revised Preliminary/Final Subdivision Plan. The revised Plan provided for four lots in addition to the already-existing lot, and asked for several variances from the Ordinance. The revised Plan requested a cul-de-sac length of 750 feet, whereas § 501.i of the Ordinance limits cul-de-sacs to 500 feet. The Anginos' revised Plan proposed an 18 foot wide street with a 90 degree curve with a radius of 40 feet, whereas § 501.g of the Ordinance requires a center line radius of 150 feet on all curves on minor public streets. Finally, the Anginos requested side slope banks of 1 to 1, whereas § 501.k.1 of the Ordinance requires side slope banks of 3 to 1 (3 feet of horizontal measurement for every 1 foot of vertical measurement). The revised Plan was denied by the Board on May 15, 1991 because the requested variances were significantly in excess of Ordinance requirements.

The Anginos appealed to the Dauphin County Court of Common Pleas, which affirmed the Board's decision. The Anginos then appealed to the Commonwealth Court of Pennsylvania which remanded to the Dauphin County Court for remand to the Board for a more detailed decision. The Board held a public hearing on July 19, 1993 and again denied the Plan by a two-to-one decision. On September 22, 1993, the Board sent the Anginos a three page letter detailing the reasons for the denial.

The requested variances were denied principally because of the mix of traffic that would exist on the road going through the development. The Anginos own a

nursery, which is located on another portion of their property, and the trucks going to and from the nursery use the road that goes through the proposed new development. If the requested variances were granted, the road would not be safe. The main reason the road would not be safe is because of the variance the Anginos had requested as to minimum center line curve radius.

A minimum center line curve radius requirement is designated in order to provide for a free flowing movement of traffic along the road, and to allow for the proper site distances that are necessary to see oncoming traffic, crossing traffic, and traffic entering from driveways, taking into consideration the types of traffic that will be using the road, including consideration of potential future use. Obviously, there should be no curves that are so sharp as to cause encroachment by traveling vehicles into the oncoming lane of traffic.

The Ordinance sets a minimum center line curve radius at 150 feet, which is the generally accepted minimum for center line radii. The Anginos requested a variance allowing a curve radius of only 40 feet, which would make the curve of the road almost four times as sharp, which makes a huge difference in the negotiability of and maneuverability around the curve.

There was ample testimony at the hearing before the Board that trucks negotiating the curve of the road would encroach on the oncoming lane of traffic. Given this fact, combined with the mountainous terrain of the land in question, and the possibility of icy conditions in winter and wet conditions in autumn and spring, it is obvious that the variances proposed by the Anginos are not safe.

The Board offered to grant all three of the Anginos' requested variances if the Anginos agreed to allow the nursery trucks to access the nursery by way of the Anginos' private drive rather than by using the road through the development. The Anginos were adamant, however, that the trucks must not use their private drive to access the nursery.

The Anginos again appealed the Board's decision to the Dauphin County Court of Common Pleas. On September 16, 1994 the Court of Common Pleas, by the Honorable Jeannine Turgeon, granted the Anginos' appeal and reversed the Board's decision. The Board appealed to the Commonwealth Court, which reversed the decision of the Court of Common Pleas by Order and Opinion dated August 8, 1995. The Anginos' request for reargument was denied on October 2, 1995, and their petition for allowance of appeal to the Pennsylvania Supreme Court was denied on March 22, 1996. Anginos have now petitioned this Court for a writ of certiorari.

ARGUMENT IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI

I. This case was decided in a way that is consistent with this Court's decisions regarding land use regulation effecting a "taking" for purposes of the Fifth Amendment, and there are therefore no special and important reasons warranting the issuance of a writ of certiorari.

As provided by Supreme Court Rule 10, review on a writ of certiorari is a matter of judicial discretion, and a

petition for a writ of certiorari will be granted only for compelling reasons. Supreme Court Rule 10 sets forth the character of the reasons the Court considers in deciding whether to grant a petition for a writ of certiorari, in relevant part, as follows:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Rule 10 further states that a petition is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

This case clearly does not involve the type of issues that warrant the granting of the Anginos' petition for a writ of certiorari. The Anginos appear to be arguing that their petition should be granted based on Rule 10(c), which states that this Court might grant a petition for a writ of certiorari where a state court has decided an important federal question in a way that conflicts with relevant decisions of the U.S. Supreme Court. The Anginos' petition must be denied, because the Commonwealth Court of Pennsylvania decided this case in a way that is completely consistent with relevant decisions of this Court.

The Anginos assert that this case involves a "practical taking" of their property in violation of the Fifth Amendment. Petition at p. 12. In support of this assertion, the Anginos cite only *irrelevant* decisions of this Court. The cases cited by the Anginos in support of their argument – *Dolan v. City of Tigard*, ___ U.S. ___, 129 L. Ed. 2d 304, 114 S. Ct. 2309 (1994); *Nollan v. California Coastal Commission*, 483 U.S. 825, 97 L. Ed. 2d 677, 107 S. Ct. 3141 (1987); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982); and *Kaiser Aetna v. United States*, 444 U.S. 164, 62 L. Ed. 2d 332, 100 S. Ct. 383 (1979) – all involve a "permanent physical occupation of the property," and in such cases this Court has "found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner." *Nollan v. California Coastal Commission, supra*, at 831-32, 97 L. Ed. 2d at 686, 107 S. Ct. 3141. Indeed, *Nollan*, *Loretto* and *Kaiser* all refer to the "right to exclude others as one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Nollan v. California Coastal Commission, supra*, at 831, citing *Loretto* and *Kaiser*.

The Anginos' case does not involve any kind of physical occupation of the property. Therefore, the line of reasoning in *Dolan v. City of Tigard*, ___ U.S. ___, 129 L. Ed. 2d 304, 114 S. Ct. 2309 (1994) and *Nollan v. California Coastal Commission*, 483 U.S. 825, 97 L. Ed. 2d 677, 107 S. Ct. 3141 (1987), relied on exclusively by the Anginos to argue that their case essentially involves a taking, does not apply in this case. The Anginos' argument must therefore be disregarded. When one considers the *relevant*

decisions of this Court, it becomes apparent that the Commonwealth Court decided this case in a manner completely consistent with those decisions.

This Court has held that a land use regulation *can* effect a taking for purposes of the Fifth Amendment prohibition against taking private property for public use without just compensation, if it does not substantially advance legitimate state interests, or if it denies an owner economically viable use of his land. *Agins v. Tiburon*, 447 U.S. 255, 260, 65 L. Ed. 2d 106, 100 S. Ct. 2138 (1980). However, the *type* of taking alleged is a critical factor in the Court's analysis. It is well-settled that a "taking" is more easily found where the interference with property can be characterized as a physical invasion rather than as an interference arising from some public program adjusting the benefits and burdens of economic life to promote the common good. *Keystone Coal Association v. DeBenedictis*, 480 U.S. 470, 488, 94 L. Ed. 2d 472, 107 S. Ct. 1232 (1987). As set forth in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982), this Court has almost invariably found that the permanent physical occupation of property constitutes a taking. However, this Court has repeatedly upheld regulations that destroy or adversely affect real property interests. *Keystone Coal Association v. DeBenedictis, supra*, at 490, 94 L. Ed. 2d 472, 107 S. Ct. 1232. This Court will rarely find a taking when the State merely restrains uses of property that are tantamount to public nuisances. *Id.*, at 491.

Because no individual has a right to use his property so as to create a nuisance or otherwise harm others, the State has not "taken" anything when it asserts its power to abate the nuisance or harm. *Keystone Coal Association v. DeBenedictis, supra*, at 491-92, 94 L. Ed. 2d 472, 107 S. Ct.

1232. In this case, the Anginos have proposed a development plan that is clearly unsafe. The curvature of the proposed public road along which they seek to build four residences is such that the trucks traveling to and from the Anginos' nursery cannot navigate the turns in the road without encroaching on the oncoming lane of traffic. This constitutes an obvious threat to the safety of the public. Therefore, the Board has not "taken" anything by requiring the Anginos to comply with the minimum curve radius requirement of the Ordinance.

In order to successfully bring a takings claim, the Anginos must establish that the State regulation in question has essentially "taken" their property by "going too far." This Court has examined the "taking" question by engaging in factual inquiries that have identified several factors, such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the governmental action, that have particular significance in deciding whether or not a regulation has gone too far. *MacDonald, Sommer & Frates v. County of Yolo, et al.*, 477 U.S. 340, 348-49, 91 L. Ed. 2d 285, 106 S. Ct. 2561 (1986). In *MacDonald, Sommer & Frates* the appellants alleged that the property upon which they had planned to build 159 residences was restricted to agricultural use by the State's action in denying all subdivision applications, and that the State had thereby taken the entire economic use of the property for the sole purpose of providing a public, open-space buffer. In *MacDonald, Sommer & Frates* this Court upheld the lower courts' rulings that the appellant's factual allegations were insufficient to make out a takings claim. The Anginos' factual allegations, then, are clearly insufficient.

In deciding whether a State action has effected a taking, this Court focuses on both the character of the action and on the nature of the interference with rights *in the parcel as a whole. Keystone Coal Association v. DeBenedictis, supra,* at 497, 94 L. Ed. 2d 472, 107 S. Ct. 1232. Where an owner possesses a full "bundle" of property rights, the destruction of one "strand" of the bundle is not a taking, because the aggregate must be viewed in its entirety. *Andrus v. Allard,* 444 U.S. 51, 65-66, 62 L. Ed. 2d 210, 100 S. Ct. 318 (1979). On the Anginos' property currently stand, among other things, the Anginos' residence, another residence and a private road, and the Anginos' nursery. When viewing the interference with the Anginos' rights in their parcel of property as a whole, it is clear that the State action in this case did not "go to far."

All property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community. *Mugler v. Kansas,* 123 U.S. 623, 665, 31 L. Ed. 205, 8 S. Ct. 273 (1887). While each of us is burdened somewhat by States' restrictions on the uses we can make of our property, we benefit greatly from the restrictions that are placed on others. *Keystone Coal Association v. DeBenedictis, supra,* at 491, 94 L. Ed. 2d 472, 107 S. Ct. 1232. The Aginos have been able to put their parcel of property to many good uses. The fact that they have not been permitted to develop four lots along an unsafe road does not arise to the level of a taking. Considering the potential injury to the community, and considering the Anginos' rights in their parcel of property as a whole, the restriction on the Anginos' use of their property has not "gone too far."

In fact, the restrictions placed on the Anginos' use of their property by the Board are minimal indeed. It is well-settled Pennsylvania law that the power to grant variances should be sparingly exercised, only where peculiar and exceptional circumstances exist. *Hasage v. Philadelphia Zoning Board of Adjustment*, 15 Pa. 31, 202 A.2d 61 (1964); *Application of Devereux Foundation*, 351 Pa. 478, 41 A.2d 744 (1945), *appeal dismissed*, 326 U.S. 686, 66 S. Ct. 89, 90 L. Ed. 403 (1945). An applicant for a variance has the burden of proving that an unnecessary hardship, unique to the particular property and precluding the proposed development, will result if the variance is not granted, and that the proposed use will not be contrary to the public health, safety, or general welfare. *Filanowski v. Zoning Board of Adjustment*, 439 Pa. 360, 266 A.2d 670 (1970); *Swade v. Zoning Board of Adjustment of Springfield Township*, 392 Pa. 269, 140 A.2d 597 (1958). Mere economic hardship will not in and of itself justify the grant of a variance. *City of Pittsburgh v. Zoning Board of Adjustment of City of Pittsburgh*, 522 Pa. 44, 559 A.2d 896 (1989); *Dishler v. Zoning Board of Adjustment of Cheltenham Township*, 414 Pa. 244, 199 A.2d 418 (1964). An undue hardship must be due to an inherent characteristic of the land. Any other type of "hardship" is economic or self-inflicted. *Filanowski v. Zoning Board of Adjustment*, 439 Pa. 360, 266 A.2d 670 (1970).

In this case, the hardship associated with the minimum curve radius requirement is economic and/or self-inflicted in nature, because the Anginos now own virtually all of the land surrounding the subdivision area, and can explore other entrances to the development. In order to develop the four lots as the Anginos propose,

they need only re-build the road to meet the minimum curve radius requirements, or propose an alternate route for access to the four lots, or agree to allow the nursery trucks to use their private drive. Thus, due to the Board's valid concern for public safety, the Anginos are very minimally restricted in the use of their property.

It is clear then, that the Pennsylvania Commonwealth Court decided this case in a way that is consistent with this Court's decisions regarding land use regulation effecting a "taking" for purposes of the Fifth Amendment, and that there are no special and important reasons warranting the allowance of appeal in this case. The Anginos' petition for a writ of certiorari must therefore be denied.

II. There was substantial evidence before the Board to support its conclusion that a grant of the variance requests posed significant public safety hazards and would be contrary to the public interest.

The remainder of the Anginos' argument relates to factual issues. The Anginos assert that the Board's findings in this case were not supported by substantial evidence. However, there was abundant evidence supporting the Board's decision to deny the variances requested by the Anginos. Each requested variance posed a safety threat to the public. Of primary concern to the Board is the minimum curve radius requirement, because of the mix of traffic that would exist on the proposed road. There would be large trucks going to and from the Anginos' nursery, and there would be residential traffic going to and from the houses on the lots. If the variance request as to minimum curve radius were granted, there

would be a threat to public safety in that the trucks would not be able to navigate the road without encroaching on the opposing lane of travel, therefore creating the possibility of head-on collisions.

The Anginos provide no basis for their argument that the development they propose would not result in an unsafe mix of traffic on the road. They merely assert that the trucks are already using the road, and that there are not many of them. The Anginos completely ignore the potential effects of the addition of traffic from four residences. Reflecting a stunning double standard, the Anginos state that safety is the reason they rejected the Board's offer to approve the plans if the Anginos would agree to let the trucks access the Anginos' nursery by way of the Anginos' private drive. The Anginos state that accepting the Board's offer of approval "would cause great safety problems because of the Anginos' private very narrow driveway and poor sight distance." Petition at p. 11. The existence of such safety problems in the proposed plans is precisely the reason for the Board's denial of the Anginos' requests for variances.

The Anginos appear to misunderstand the Board's concern in that they assert that because the heavy traffic to the nursery already exists, the Board should not consider that factor in its analysis of the minimum curve radius variance request. Such reasoning is illogical. The heavy traffic that already exists is the very factor that makes the proposed development unsafe. The road is sharply curved, on a steep incline, and would be used by both large trucks and passenger cars. Large trucks cannot navigate the road without encroaching on the opposite lane of travel. If the road were icy, and a truck and car

were approaching each other from opposite directions on the road, an accident would be virtually unavoidable. The Anginos find it incredible that they will not be able to develop the property as they have proposed if they cannot comply with the Ordinance. But that is clearly the law. The variances requested by the Anginos were properly denied by the Board because they represent an unacceptable compromise to the public safety.

CONCLUSION

For the foregoing reasons, the Board contends that the decision of the Commonwealth Court of Pennsylvania in this case was in full accordance with the relevant decisions of this Court. The Board, therefore, respectfully requests that this action be concluded and that the Anginos' petition for writ of certiorari be denied.

Respectfully submitted,

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